United Nations A/58/261

General Assembly

Distr.: General
7 August 2003

Original: English

Fifty-eighth session
Item 119 (b) of the provisional agenda*
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

National institutions for the promotion and protection of human rights

Report of the Secretary-General**

Summary

The present report, covering activities for the period from July 2001 through July 2003 contains information on the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to establish and strengthen national institutions; the measures taken by Governments and national institutions in this regard; the support provided to regional activities of national human rights institutions; and the consultations held by treaty bodies and special mechanisms of the Commission on Human Rights with national institutions. Information regarding the work of national institutions in respect of specific thematic issues is also included. Additional information on assistance provided to national institutions can be found in the OHCHR reports on activities of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights.

* A/58/150.

** As the report covers the period from July 2001 through July 2003, the report could not be submitted by the 25 July slotted date.

03-46514 (E) 090903

Contents

		Paragraphs	Page
I.	Introduction	1	3
II.	Office of the United Nations High Commissioner for Human Rights and national institutions	2–33	3
	A. Advisory services for the establishment of national institutions	7–11	4
	B. Support to international initiatives	12–16	5
	C. Support to regional activities	17–33	6
III.	Other activities of national institutions	34–35	9
IV.	Cooperation between human rights treaty bodies and national institutions	36–39	10
V.	Cooperation between the Office of the United Nations High Commissioner for Human Rights, United Nation agencies and programmes, and international and regional organizations	40–41	11
VI.	National human rights institutions and thematic issues	42–55	11
	A. Promotion and protection of economic, social and cultural rights	42–44	11
	B. Racism and racial discrimination	45–47	12
	C. Rights of the child	48	12
	D. Rights of persons with disabilities	49–52	12
	E. Prevention of torture	53	13
	F. Reproductive rights and HIV/AIDS	54–55	13
VII.	Conclusions	56–57	14

I. Introduction

1. The present report has been prepared pursuant to paragraph 19 of General Assembly resolution 56/158 of 19 December 2001. It covers activities for the period from July 2001 through July 2003 and complements the annual reports presented to the Commission on Human Rights during that period (E/CN.4/2002/114 and E/CN.4/2003/110). More information on assistance to national human rights institutions can be found in the reports of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the programme of advisory services and technical assistance in the field of human rights, the activities of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights, and the activities of the United Nations High Commissioner for Human Rights as well as on the web site of the national institutions (http://www.nhri.net).

II. Office of the United Nations High Commissioner for Human Rights and national institutions

2. In his report of 9 September 2002 to the General Assembly (A/57/387 and Corr.1), the Secretary-General stressed that "The capacity of the United Nations to help individual countries to build strong human rights institutions will be strengthened. ... Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the Organization. These activities are especially important in countries emerging from conflict."

3. The United Nations High Commissioner for Human Rights attaches great importance to the role that national institutions play in translating international human rights norms into laws, policies and practices that ensure respect for human rights at the local level. The establishment and strengthening of national institutions is a key objective of the Office of the High Commissioner and a major component of its programme of advisory services and technical assistance in the field of human rights. The High Commissioner regularly holds consultations with members and senior staff of national human rights institutions of different countries. In his closing statement to the fifty-ninth session of the Commission of Human Rights, the High Commissioner emphasized the increasingly active role played by national human rights institutions in advancing the cause of human rights and suggested that appropriate time, importance and attention be accorded to them at the next session of the Commission.

4. The activities of the High Commissioner regarding national institutions are undertaken with the support of the OHCHR National Institutions Team. Practical advice is given to Governments on an appropriate constitutional or legislative framework for any new national institution and on the nature, functions, powers and responsibilities of such institutions. Support is provided to new and/or established national human rights institutions in the design of effective management structures and strategic plans, complaints-handling systems, human rights education and training programmes and their implementation, and the provision of human rights information and documentation. International and regional meetings of national

institutions are facilitated to encourage the sharing of experience and the development of best practices.

5. The work of OHCHR in the area of national institutions is guided by the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), adopted by the General Assembly in resolution 48/134 of 20 December 1993. The High Commissioner supports programmes designed to strengthen and support a number of existing institutions that do not fully comply with these principles, but are willing to strengthen their independence and effectiveness.

6. In order to address the increasing interest in the work of national institutions, the National Institutions Team was strengthened by two new members in January 2003. This will help institutionalize the work of the National Institutions Team in OHCHR and reinforce cooperation with the different branches of the Office and, in particular, with the Geographic Team of the Activities and Programmes Branch.

A. Advisory services for the establishment of national institutions

7. During the past two years, OHCHR has provided information, advice or assistance, at the request of Governments or entities, in the process of establishing, or considering the establishment of national human rights institutions in Afghanistan, Armenia, Azerbaijan, Côte d'Ivoire, Fiji, Germany, Ireland, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Palestine, the Republic of Korea, Rwanda, Serbia and Montenegro, Sierra Leone, Sri Lanka, the former Yugoslav Republic of Macedonia, the Sudan, Switzerland, Thailand, Timor-Leste and the United Kingdom of Great Britain and Northern Ireland (Scotland).

8. The Office has also provided information, advice or material support to several established national human rights institutions, including the 43 national institutions fully accredited by the International Coordinating Committee of National Human Rights Institutions, newly established national institutions (Jordan, the Republic of Korea and Thailand), as well as other institutions.

9. During the reporting period, OHCHR held high-level meetings, seminars and workshops to provide advice or assistance to Governments; held consultations with government officials, parliamentarians, established national institutions, non-governmental organizations and representatives from the academic sector; conducted technical cooperation needs-assessment and project-formulation missions; held meetings of the steering committees of technical cooperation projects; carried out joint activities with such organizations as the Commonwealth, the Council of Europe and the Organisation for Security and Cooperation in Europe, as well as with other United Nations agencies and programmes; conducted missions to countries in the process of establishing national human rights institutions; and provided training to staff of national human rights institutions and senior staff of other United Nations agencies and programmes.

10. In addition, OHCHR responded to numerous requests from Governments and non-governmental organizations seeking general information concerning national human rights institutions. The rapidly increasing number of national human rights institutions received periodic information on human rights meetings and the activities of the Office, United Nations publications, and material relating to the

Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the rights of persons with disabilities and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. To further strengthen the overall technical cooperation programme on national human rights institutions, OHCHR continued to expand its roster of consultants and experts/practitioners on national human rights institutions, compile legislation of national human rights institutions established in accordance with the Paris Principles and compile the best practices of national human rights institutions with regard to their work on thematic issues such as racism and the promotion and protection of children's and women's rights, as well as best practices relating to their functions and operations.

B. Support to international initiatives

1. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

12. The National Institutions Team is the secretariat of the International Coordinating Committee, providing it with relevant information and facilitating the holding of its meetings. During the reporting period, the Committee held its tenth and eleventh sessions. The Credentials Committee of the International Coordinating Committee acts in its independent capacity, but its work is facilitated by the National Institutions Team. The Committee generally meets during the sessions of the Commission on Human Rights.

2. Sixth International Conference of National Human Rights Institutions

13. The Sixth International Conference of National Human Rights Institutions was held in Copenhagen and Lund, Sweden, from 10 to 13 April 2002. The Conference was organized by the Danish Institute for Human Rights and the Swedish Ombudsman against Ethnic Discrimination, in cooperation with the Chair of the International Coordinating Committee and OHCHR, and with the financial support of OHCHR and the Governments of Denmark and Sweden. The Conference had over 100 participants from a wide array of national institutions worldwide.

14. The overall theme of the Conference was the role of national institutions in combating racial discrimination, as a follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Conference shed light on the crucial role of national institutions in combating racial discrimination and, inter alia, discussed best practices in promoting tolerance through education and the media. Moreover, there was a focus on remedies, including the handling of complaints, as well as on the monitoring and advocacy function of the institutions in relation to racial discrimination. The aim was to develop a catalogue of best practices and strategies for national institutions in their fight against racial discrimination.

3. Other conferences

15. The National Institutions Team participated in the Friedrich Naumann Stiftung Conference on Targeting Human Rights, the Rule of Law and Democracy:

Perspectives for NGOs, held in Leipzig, Germany, from 12 to 15 September 2002. This was the second conference of its kind in which the Team participated in efforts to broaden knowledge about national institutions. In this particular instance the importance of such institutions in creating a culture of human rights was emphasized.

4. Information and education activities

16. The National Institutions Team developed, with the Danish Institute for Human Rights, a web site on national human rights institutions (www.nhri.net) which is linked to all existing national institutions' web sites and to the OHCHR main web page. This web site is a useful tool for the exchange of information between national institutions and the sharing of best practices. Many of the documents dealing with the events noted in the present report may be found on this web site.

C. Support to regional initiatives

1. The Americas and the Caribbean

Network of National Human Rights Institutions of the Americas

17. The Network of National Human Rights Institutions of the Americas, created in 2000, held its first General Assembly in March 2002 in Kingston and its second General Assembly in San José, in March 2003. The Network now has 14 members: the national institutions of Argentina, Bolivia, Canada, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru and Venezuela. The National Human Rights Commission of Mexico is the Network's ad interim secretariat. The General Assembly of the Americas Network adopted its rules of procedures and elected the Coordinating Committee of the Network, composed of the national institutions of Canada, Colombia, Costa Rica and Mexico.

18. The national institutions participating in the meeting agreed to strengthen cooperation with OHCHR, the International Coordinating Committee of National Institutions, the Organization of American States, as well as with the Caribbean Ombudsman Association, the Andean Council of Ombudsmen (Consejo Andino de Defensores del Pueblo), the Central American Council of Ombudsmen (Consejo Centroamericanos de Procuradores de Derechos Humanos), and the Ibero-American Federation of Ombudsmen. The first General Assembly was followed by a one-day workshop on the rights of indigenous people, and the second by a workshop on the rights of persons with disabilities.

Caribbean Ombudsman Association

19. The OHCHR participated in the Second Regional Conference of the Caribbean Ombudsman Association, held in Trinidad and Tobago from 7 to 10 May 2002. The participants in the Conference focused on the important role of national institutions and the Caribbean Ombudsman Association in assisting Governments to tackle poverty and recognized that violations of human rights constitute maladministration and therefore are the concern of the Association.

2. Africa

Fourth Conference of African National Human Rights Institutions

20. The Fourth Conference of African National Human Rights Institutions was held in Kampala from 14 to 16 August 2002. The Conference, with the support and participation of OHCHR, had as its overall theme "A rights-based approach to development". Four thematic issues were discussed: human rights-based approaches to development strategies and challenges; managing conflict in Africa for sustainable development; the role of civil society in promoting good governance; and the promotion and protection of the rights of persons with disabilities. In addition, participants decided to establish a Permanent Secretariat for African National Human Rights Institutions, to be hosted for the first three years by the South African Human Rights Commission. OHCHR has been working with the Commission on a package of support for the Permanent Secretariat. The Uganda Human Rights Commission was elected as the new Chair of the Coordinating Committee of African National Human Rights Institutions.

Meeting of Southern, Central and Eastern African National Institutions

21. OHCHR supported the Meeting of Southern, Central and Eastern African National Institutions, which was held in Lusaka from 26 to 29 June 2002 and organized by the Zambia Human Rights Commission in cooperation with the United Nations Development Programme (UNDP). Participants discussed the importance of strengthening subregional cooperation; lessons in the promotion and protection of human rights; constitutional experiences, research and education in the work of a human rights commission; and the World Summit on Sustainable Development.

Training workshop on the implementation of human rights instruments in Southern Africa (Mbabane, 9-13 June, 2003)

22. Following previous assistance provided by OHCHR in the region, it was agreed among the national partners that a cluster workshop would be organized for six or seven countries in the region which share a common language and concerns. Most countries in the region requested that the OHCHR Regional Office organize a training workshop to strengthen the capacities of government officials in charge of the design and enforcement of laws, human rights implementation mechanisms and monitoring and reporting to treaty bodies. The workshop focused, inter alia, on the role of OHCHR and how it provided support to States and national human rights promotion and protection institutions under its technical assistance programme. The team leader of the National Institutions Team addressed participants on the functions and role of national institutions.

3. Asia and the Pacific

Tenth and Eleventh Workshops on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region

23. OHCHR participated and supported the involvement of national institutions in the Tenth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region, held in Beirut from 4 to 6 March 2002, and the Eleventh Workshop, held in Islamabad from 25 to 27 February 2003. Prior to the official meetings, national institutions and civil society met to discuss the

Framework for Regional Cooperation in the Asia and Pacific Region, adopted at the Sixth Workshop, held in Tehran, and future activities within the region.

24. Participating States called for further strengthening of national institutions for the promotion and protection of human rights in many countries of the region and reaffirmed that national institutions should be established following an appropriate and inclusive process of consultation; they also reaffirmed that the status and responsibilities of national institutions should be consistent with the Paris Principles.

25. States welcomed the support provided by OHCHR to the Asia-Pacific Forum of National Human Rights Institutions, encouraged the Office to continue to provide technical cooperation, at the request of Governments, for the development of national institutions and requested OHCHR to promote and facilitate cooperation between Governments, civil society and national institutions.

Annual meetings of the Asia-Pacific Forum of National Human Rights Institutions

26. The Asia-Pacific Forum of National Human Rights Institutions held its sixth annual meeting in Colombo, from 22 to 27 September 2001 and its seventh annual meeting in New Delhi from 11 to 13 November 2002. Participants included the 12 national institution members of the Asia-Pacific Forum (Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, the Republic of Korea, Sri Lanka and Thailand). Representatives of the national institutions of Afghanistan and the Islamic Republic of Iran, as well as representatives of Governments of the region and international, regional and national non-governmental organizations participated as observers.

27. The present Chair of the Asia-Pacific Forum is the National Human Rights Commission of India.

Advisory Council of Jurists

28. The Forum's Advisory Council of Jurists met in parallel with the Asia-Pacific Forum meetings. The Council is comprised of eminent jurists from Forum member States who, in an independent capacity, provide advice to the Forum members. At its last annual meeting, Forum members were advised on the issue of trafficking. The secretariat of the Forum was asked to gather the necessary information to assist in implementing the Council's recommendations. The Council had previously provided advice on the issues of the death penalty and child pornography. It has now been called upon by the Forum members to provide advice regarding terrorism.

Europe

Sixth Annual Conference of European Ombudsmen

29. The Sixth Annual Conference of European Ombudsmen, hosted by the Commissioner for Civil Rights Protection of Poland, was held in Krakow, Poland, from 22 to 24 May 2002. The Conference, which OHCHR attended, reviewed the role of the Ombudsmen under extreme and extraordinary circumstances and discussed how ombudsmen could provide more effective protection for refugees and the role of the ombudsman vis-à-vis the international community, international human rights institutions and humanitarian law.

Second Council of Europe Round Table of National Human Rights Institutions; Fourth European Meeting of National Human Rights Institutions

30. The Second Council of Europe Round Table of National Human Rights Institutions was held in Dublin from 14 to 16 November 2002. It was followed by the Fourth European Meeting of National Human Rights Institutions.

31. The Round Table was attended by five European national institutions, which have been accredited by the Credentials Committee of the International Coordinating Committee of National Institutions as being in accordance with the Paris Principles, and a number of other European institutions with both broad-based and sector-specific mandates. The discussion focused on asylum-seekers, the role of national institutions in conflict, and cooperation between the Council of Europe, the United Nations and national institutions.

32. An important part of the discussion was the role of national institutions in the work of the European Court of Human Rights. In this regard, the Council of Europe agreed to take into account the views of national institutions on how the Court could function more effectively and deal more readily with the ever-increasing number of complaints submitted to it. The national institutions established a working group to pursue this issue.

33. With respect to the Fourth European Meeting of National Institutions, the Council of Europe highlighted the importance of national institutions in its work and indicated that its Commissioner for Human Rights would take primary responsibility for this work. The Commission nationale consultative des droits de l'homme of France took over from the Danish Institute for Human Rights as the Coordinator of European national institutions.

III. Other activities of national institutions

34. Meeting in Paris from 29 to 31 May 2002, the national institutions of la Francophonie agreed to the formation of the Association francophone des commissions nationales de promotion et de protection des droits de l'homme. The Association was established to play an active role in strengthening existing francophone national institutions through the promotion and development of cooperation programmes, in the exchange of expertise and in providing follow-up to the Bamako Declaration on democracy, rights and freedoms, adopted in November 2000, the Association adopted its statutes and elected its Executive Board, with the Comité sénégalais des droits de l'homme elected Chair and the Commission nationale consultative des droits de l'homme of France designated as its secretariat.

35. The Seventh Annual Congress of the Ibero-American Federation of Ombudsmen was held in Lisbon from 18 to 20 November 2002. Under the global theme "The ombudsman, new competencies, new functions", the Congress discussed the following topics: mediation of the ombudsman in conflicts between the Government and citizens; good governance as a right of citizenship; monitoring and evaluating public policies; and the ombudsman's intervention in the business sector.

IV. Cooperation between human rights treaty bodies and national institutions

36. Treaty monitoring bodies regularly request States parties to provide information relating to the establishment of national human rights institutions. The National Institutions Team, in cooperation with the Support Services Branch, has brought to the attention of the treaty bodies the important role national institutions can play in translating international standards at the national level and in monitoring their implementation. The secretariats of the treaty bodies regularly consult the National Institutions Team about the work of national institutions in a country under consideration.

Joint European Union/OHCHR Project

37. A project on strengthening the implementation of human rights treaty body recommendations through the enhancement of national protection mechanisms has been developed between the European Union and OHCHR. This project aims at strengthening the national capacity of five target groups, including national human rights institutions. It will be implemented by conducting capacity-building and awareness-raising workshops in Geneva and in the field. Representatives of selected national institutions will attend treaty body sessions and regional workshops and will thus be in a position to follow the treaty body process, including the follow-up to concluding observations. The National Institutions Team will co-execute the joint EU/OHCHR project with other branches of the Office.

38. The National Institutions Team provided assistance to the Committee on the Rights of the Child in the preparation of its general comment No. 2, adopted in 2002, on the role of independent national human rights institutions in the promotion and protection of the rights of the child. The general comment underlines the national institutions' key role in the implementation and realization of children's rights. It encourages States parties to establish independent national institutions for the promotion and monitoring of the Convention on the Rights of the Child, or to review the effectiveness of existing institutions in relation to the promotion and protection of child rights. The Committee noted that among other functions, national institutions should be mandated to provide effective remedies for children who are victims of human rights violations. Two other treaty bodies have also adopted general comments/recommendations emphasizing the important role of national human rights institutions with regard to the implementation of the recommendations at the national level: the Committee on the Elimination of Racial Discrimination (general recommendation XVII of 1993) and the Committee on Economic, Social and Cultural Rights (general comment No. 10 of 1998).

39. OHCHR participated in a workshop on using the United Nations mechanisms for protecting human rights, held in Belfast, Northern Ireland, from 8 to 10 October 2002, which was hosted by the Northern Ireland Human Rights Commission with the support of the British Council. The workshop, directed at national institutions, informed participants about United Nations human rights mechanisms, provided for a sharing of best practices among national institutions with regard to their experiences with the human rights mechanisms and explored ways to utilize various sources of information in relation to those mechanisms.

V. Cooperation between the Office of the United Nations High Commissioner for Human Rights, United Nations agencies and programmes, and international and regional organizations

40. Many activities and programmes for the establishment or strengthening of national institutions have been conducted in cooperation with the United Nations Development Programme (UNDP), within the framework of the 1998 memorandum of understanding between OHCHR and UNDP. During the reporting period, four technical cooperation projects, in Ecuador, Mongolia, Rwanda and Uganda, were implemented jointly by OHCHR and UNDP. OHCHR, through its human rights adviser, is also regularly consulted by UNDP on capacity-building initiatives for the Nepal Human Rights Commission. OHCHR has reinitiated contacts with the United Nations Volunteers programme to provide support to national institutions, and is developing and implementing a pilot project for the Asia-Pacific Forum of National Human Rights Institutions.

41. OHCHR also cooperates in a number of initiatives with the Council of Europe and the Organisation for Security and Cooperation in Europe. Cooperation has been strengthened with the Inter-American Institute for Human Rights, including through the holding of regional meetings of national institutions. Partnerships with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and the Friedrich Naumann Foundation, as well as with the British Council, remained active. It is anticipated that cooperation with regional institutions will continue to be strengthened by engaging with such institutions on a practical level.

VI. National human rights institutions and thematic issues

A. Promotion and protection of economic, social and cultural rights

42. The promotion and protection of economic, social and cultural rights was one of the thematic issues discussed during the Fourth Conference of African National Human Rights Institutions (see para. 20 above). Participating African national institutions called upon African Governments to adopt a rights-based approach to development, particularly by focusing special attention on the eradication of poverty, the provision of basic education, the right to health and the right to an adequate standard of living. They called for the ratification of the International Covenant on Economic, Social and Cultural Rights and for the implementation of legislative and administrative measures for the realization of the rights to health, shelter, food, safe water, education and employment.

43. The United Nations High Commissioner for Human Rights and the National Institutions Team participated in the Third British Council International Human Rights Conference on the theme "Social and economic rights: beyond the rhetoric", held in Belfast, Northern Ireland, on 18 May 2002. The High Commissioner highlighted the importance of applying the international human rights norms at the national level and noted the importance of national institutions, in verifying the application of the norms by Governments.

44. The *Handbook on National Institutions and Economic, Social and Cultural Rights* will be released in 2003.

B. Racism and racial discrimination

45. A regional workshop on national human rights institutions, human rights education, the media and racism was organized by the Asia-Pacific Forum of National Human Rights Institutions in Sydney, Australia, on 15 and 16 July 2002 with the support and participation of OHCHR. The objectives of this workshop were to strengthen and promote information exchanges, to establish best practice standards and to develop networks between national institutions, the media, OHCHR, Governments and regional and national non-governmental organizations concerned with human rights.

46. OHCHR, with the support of the Rockefeller and the Carnegie Foundations, assisted a number of national institutions in undertaking initiatives at the national level in relation to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001). During the reporting period, OHCHR supported the Reconstructing Race Relations Workshop, held in Suva on 30 August 2002 and organized by the Fiji Human Rights Commission, which benefited from the support of the Rockefeller Foundation.

Small grants

47. The National Institutions Team has initiated, in close cooperation with the Anti-Discrimination Unit of OHCHR, a new series of small grants to national institutions in order to support practical and grass-roots activities on the follow-up to the World Conference. This new initiative will be implemented in the second half of 2003.

C. Rights of the child

48. As described in paragraph 38 above, the Committee on the Rights of the Child adopted general comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child.

D. Rights of persons with disabilities

49. National institutions were closely involved in the drafting of the study, commissioned by OHCHR, on human rights and disability. The National Institutions Team has been extensively involved in informing national institutions about the work of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities. The Committee has agreed to permit national institutions to participate independently in its discussions.

50. The national institutions of the four regional groupings have all discussed the importance of the rights of persons with disabilities and the possible drafting of an international convention relating to the protection of persons with disabilities, with the support and participation of OHCHR. The Network of National Human Rights

Institutions of the Americas convened a workshop in Costa Rica in March 2003 to discuss the role of national institutions in addressing the issue of the promotion and protection of the rights of persons with disabilities at the international, regional and national levels.

51. Similarly, a workshop on disability for national institutions from the countries of the Commonwealth and the Asia-Pacific Region, entitled "Promoting the rights of people with disabilities: towards a new United Nations convention", was held in New Delhi from 26 to 30 May 2003, with the support of the British Council. The conclusions and recommendations adopted were channelled into the work of the Ad Hoc Committee. In addition, African human rights institutions, with the help and assistance of OHCHR, held a regional seminar to discuss the promotion and protection of the rights of persons with disabilities in preparation for the second session of the Ad Hoc Committee. The regional workshop took place in Uganda; it adopted general conclusions and recommendations which were also included in the work of the Ad Hoc Committee.

52. Some 15 national institutions from all over the world attended the second session of the Ad Hoc Committee, held in New York from 16 to 27 June 2003. They made three joint statements. It was decided to include a representative of the national human rights institutions accredited to the International Coordinating Committee in the working group established to prepare and present a draft text of a convention.

E. Prevention of torture

53. The Optional Protocol to the Convention against Torture, adopted by the General Assembly at its fifty-seventh session, opens the possibility for Governments that ratify it to use national human rights institutions as national preventive mechanisms. In this context, the Association for the Prevention of Torture, a Geneva-based NGO, organized in cooperation with OHCHR, a seminar on domestic visiting mechanisms around the world: practices and lessons learned. The seminar, held from 2 to 4 July 2003, aimed at enabling representatives from a variety of existing mechanisms for visits to places of detention to share experiences and drew lessons from the methodology, functioning and effectiveness of various types of visiting mechanisms. A number of representatives of national institutions took part in the seminar, whose conclusions will be published shortly.

F. Reproductive rights and HIV/AIDS

54. A regional workshop on reproductive rights, organized by OHCHR in cooperation with the United Nations Population Fund (UNFPA) and the Inter-American Institute for Human Rights, was held in San José from 14 to 16 May 2002. A follow-up workshop on the promotion and protection of reproductive rights through the work of the ombudsmen of the Caribbean was organized by OHCR, again in Costa Rica with the cooperation of the Institute and UNFPA, from 18 to 20 March 2003.

55. OHCHR supports the capacity of national institutions to address HIV/AIDS-related human rights issues by encouraging them to investigate and respond to HIV/AIDS-related human rights violations, provide human rights education in the

context of HIV/AIDS, and support and advise Governments on the integration of human rights principles and standards into national policies and legislation on HIV/AIDS. OHCHR is working closely with the Joint United Nations Programme on HIV/AIDS to support national institutions in strengthening the focus on HIV/AIDS-related issues within their respective mandates and activities, including by developing training materials. It is anticipated that a handbook on the role of national institutions and HIV/AIDS will be drafted in 2003.

VII. Conclusions

56. OHCHR will continue to strengthen established national human rights institutions and provide support to Member States that are in the process of establishing such institutions. It will provide practical advice to the growing number of countries requesting it, improve United Nations system-wide coordination of the work of national institutions and increase the participation of national institutions in the appropriate United Nations human rights bodies and other international forums. OHCHR will encourage the sharing of best practices among national institutions and facilitate their access to relevant information. Greater emphasis will be placed on building the knowledge and expertise of United Nations country teams on national institutions. Similarly, the inclusion of national institutions in the common country assessment/United Nations Development Assistance Framework process will be encouraged. Responding to the Secretary-General's call to reflect on the role of national institutions in conflict and post-conflict resolution, particular attention will be paid to this area.

57. Holding regional and international meetings of national institutions to promote the exchange of information and experience concerning the establishment and effective operation of such institutions has proved an effective mechanism for strengthening those institutions. Nevertheless, Governments and the other partners of OHCHR must ensure that the United Nations standards with regard to national institutions are respected. OHCHR draws the attention of national institutions to the importance of the Paris Principles, adopted unanimously by the General Assembly in 1993, and invites them to reaffirm their validity and the necessity of complying with them.

United Nations A/58/262

General Assembly

Distr.: General
8 August 2003

Original: English

Fifty-eighth session
Item 26 of the provisional agenda*
The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development

United Nations Verification Mission in Guatemala: renewal of mandate

Report of the Secretary-General

Summary

The present report summarizes developments relating to the implementation of Guatemala's 1996 peace agreements. It describes a complex and precarious political context that has slowed the implementation of agreements reached between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca. General elections are scheduled for November 2003, and a new Government will take over in January 2004. To contribute to a smooth transition, the Secretary-General is recommending a renewal of the mandate of the United Nations Verification Mission in Guatemala from 1 January to 31 December 2004.

* A/58/150.

03-46568 (E) 080903

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 57/161 of 16 December 2002, by which the Assembly authorized the renewal of the mandate of the United Nations Verification Mission in Guatemala (MINUGUA) from 1 January to 31 December 2003 and requested me to submit an updated report to the Assembly at its fifty-eighth session, together with recommendations regarding the best way to accompany Guatemala in its peace-building process beyond 31 December 2003.

2. In view of the fact that a new Government will assume office in January 2004, President Alfonso Portillo requested in September 2002 that the MINUGUA mandate be extended until the end of 2004. In the light of that request, I initiated consultations with interested Member States.

3. The present report provides a brief political overview (a detailed account may be found in my eighth verification report, document A/58/267). It also reports progress in the implementation of the Mission's transition strategy in preparation for its departure and towards the main objective of strengthening national capacities to implement the peace agenda. Lastly, it presents a plan for restructuring the Mission in 2004, as the final stage in the phase-out process leading to the closure of MINUGUA.

4. The Government's request for the extension of the MINUGUA mandate has been supported by the Group of Friends of the Guatemalan peace process (Colombia, Mexico, Norway, Spain, the United States of America and Venezuela) and other Member States. Member States emphasized that MINUGUA could be a stabilizing factor in the period of uncertainty that generally accompanies the transition to a new Government. It was felt that in 2004 the Mission should encourage continued implementation of the agreements by the new Government authorities while continuing international verification and reporting, especially on human rights and demilitarization.

Political context

5. The implementation of the peace accords in the past year fell short of the expectations generated at the outset of the period and were insufficient to inject new momentum into the peace process. The Mission verified progress in specific areas, such as the approval of a reparations programme for the victims of human rights violations committed during the armed conflict, the partial redeployment of the military in conformity with peacetime needs and the passage of several pieces of legislation that penalize discrimination, stipulate that public services should be provided in indigenous languages, broaden the protection of the rights of children and create civilian service as an alternative to mandatory military service. Yet too many governmental initiatives were inconclusive or limited in relation to the magnitude of the problems they sought to address. Advances tended to be overshadowed in the public eye, moreover, by negative developments, such as the worsening public security situation, persistent corruption, obstacles in the fight against impunity and an ongoing climate of intimidation against justice officials and human rights defenders.

6. Consolidating the vision of the peace accords will require greater political will, the involvement of all sectors of society and the continued engagement of the international community. Still, the critical evaluation of the last period should not be cause for pessimism. Nor should we lose sight of the broader gains of the Guatemalan peace process. Nearly seven years after the signing of the Agreement on a Firm and Lasting Peace, it is no small achievement that fighting has not resumed, that unprecedented political space now exists for groups in society that were traditionally excluded and that long-term reform processes have been launched to strengthen Guatemala's democracy and eradicate the many root causes of the conflict. With elections approaching and a new Administration to take office next year, the challenge ahead will be to consolidate the gains to date and to deepen the still incipient reform process.

7. National elections will be held in November in an increasingly tense and polarized atmosphere. At stake are the presidency, all 158 congressional seats and all 331 municipal governments. A few violent incidents were reported at the start of the campaign period, and the build-up to the elections is generating tensions at the local level, particularly in hotly contested municipal races. Electoral authorities have come under increased pressure, especially after a controversial ruling in July by the nation's highest court permitting the presidential candidacy of retired General Efraín Ríos Montt. The high court had previously banned his participation on constitutional grounds. Its decision served to increase tension in an already complex electoral panorama, marked by the splintering of parties and shifting alliances.

8. The country's new leaders will face enormous challenges to overcome disunity and provide coherent direction forward. There will be changes at every level of government, both national and local, and, as is customary, there is apt to be enormous staff turnover, even at the technical level in many State institutions. It will be no small task to ensure the continuity of important institutions and programmes that have been developed as part of the peace agreements. The new Government will have a great responsibility in this regard, but civil society and the private sector will also need to play a forceful role and lend their creativity to the building of a stronger and more effective consensus around the peace agenda. The support of the international community and of the United Nations, in particular, will continue to be crucial as new authorities take over and tackle their new functions.

II. The transition process

9. During 2003, MINUGUA has continued to carry out its mandate to verify compliance with the peace agreements, offer good offices, provide technical assistance and inform the public on its activities and the results of its verification, as laid out in my report dated 1 November 2002 (A/57/584). This has been done within the framework of a general transition strategy designed to minimize the potential impact of the Mission's departure from Guatemala and to contribute to the long-term sustainability of the peace process.

10. Even with continued advances in the implementation of the peace agreements, it is foreseeable that many aspects will remain only partially implemented at the end of the MINUGUA mandate, especially those requiring structural change or significant, ongoing budgetary commitments by the Government.

11. MINUGUA has implemented a transition strategy based on the core notion that future advances and the long-term success of the Guatemalan peace process depends on the capacities and renewed commitment to the peace agreements of Guatemalan institutions, both of the State and of civil society. In October 2002 the Mission defined priority partners for the transition, and throughout 2003 much of the Mission's work, both at headquarters and at the regional offices, has focused on building the capacity of these partners to provide oversight and to promote and monitor issues defined in the accords. A large part of this work will conclude in 2003 or early 2004, although follow-on assistance will be provided in a much more reduced and selective manner. In 2004, the Mission will seek to have a greater political impact — through good offices and public information — to ensure that central Government and local authorities understand and appropriate the peace agenda.

12. As the Mission's most similar State counterpart, the Office of the Human Rights Ombudsman has been given special priority. When MINUGUA leaves, only that Office will have the national mandate and territorial coverage to serve the population by investigating complaints and calling for State action regarding human rights problems. In addition, on the basis of a broad interpretation of its legal framework, the Ombudsman has proposed a strong role for his Office in monitoring peace accord implementation after MINUGUA closes. Support for the Office of the Human Rights Ombudsman, pursuant to a memorandum of understanding signed in October 2002, has involved all of the Mission's substantive units and field offices. Major advances accomplished in 2003 with the Office of the Human Rights Ombudsman include country-wide, staff training on a range of human rights monitoring and other peace issues, increasing joint verification and technical assistance to create computerized information systems.

13. The Mission's work with civil society actors aims to complement efforts with the Office of the Human Rights Ombudsman and other key State institutions, especially on issues and in regions where the responsible State entities remain weak. This has involved training local human rights organizations for receiving complaints and assisting victims; providing technical criteria and information on budget and fiscal policy to specialists at research centres in the framework of the peace agenda; and providing technical support to civil society groups launching pilot programmes monitoring police and military activity in provincial areas. Technical assistance has also been provided to local indigenous and women's organizations working in the decentralized structures for participatory planning and oversight, known as Development Councils.

14. MINUGUA continues to serve as an observer on the Commission to Follow up the Implementation of the Peace Agreements, participating in discussions to revamp the peace institutions (including the Commission itself) as one step in reinvigorating the peace process. Currently, the Commission has little technical capacity of its own and depends heavily on the Mission for information and analysis. With significant reform and sufficient resources, however, the Commission could provide general monitoring and oversight of the pending peace agenda and serve as a national advocate for the peace agreements. The Mission will continue to work in this direction throughout 2004.

15. The Mission has no illusions that the problems of the country's weak institutions — both of the State and of civil society — can be solved in the short

term, or that its efforts to strengthen capacities of key partners can, by themselves, lead to a revitalized peace process. Nonetheless, concerted efforts by Mission staff on specific issues with selected institutions — both at the Guatemala City headquarters and at field offices — are helping to consolidate skills.

16. In addition to transition efforts with national institutions and organizations, complementary measures have been advanced to ensure specific follow-on by the specialized agencies, funds and programmes of the United Nations system, as well as by members of the international community. This work will intensify in 2004, in preparation for the Mission's departure.

17. It is envisaged that the Office of the United Nations High Commissioner for Human Rights (OHCHR) will upgrade its current technical assistance project in Guatemala, with a fuller mandate for human rights observation and enhanced technical assistance. The Mission has worked closely during 2003 with the existing OHCHR project, both to implement a joint work plan on indigenous peoples' rights, as well as to assist in developing plans for the future work of OHCHR in Guatemala; this collaboration will deepen in 2004.

18. The Mission is working with the United Nations country team to develop the new United Nations Development Assistance Framework and to build greater capacity for monitoring and reporting on the implementation of the pending socio-economic commitments contained in the peace agreements. In 2003 the Mission coordinated efforts to produce a supplement to the annual *Human Development Report* that integrates information from several United Nations programmes and agencies and presents a joint assessment of the status of the commitments. In 2004 MINUGUA will provide only limited technical support, and in coming years the Resident Coordinator will continue the effort to ensure United Nations reporting on these issues.

19. Trust Fund projects on a range of socio-economic, justice, public security and defence issues have been completed, and follow-up needs and lessons learned have been presented to the United Nations Development Programme (UNDP), which has taken measures to provide greater support and technical assistance to national institutions in these areas. In addition, MINUGUA headquarters staff are working with the donor community and cooperation agencies to identify priorities that emerge as a result of the Mission's phase-out. This work will be strengthened in 2004 to encourage continued financial support in these areas. In this same vein, the Mission's field offices will also collaborate with the specialized agencies, funds and programmes of the United Nations system and other international cooperation agencies by providing contacts and by briefing them on the political situation in the region, the status of peace accord implementation and other international cooperation projects at the departmental, municipal or regional level.

20. The Mission works closely with the Dialogue Group — composed of major bilateral donors and multilateral development banks — which has projected a unified international voice in support of the implementation of the pending commitments contained in the peace agreements. MINUGUA will continue to provide information and analysis to the Dialogue Group, given the Group's key role in facilitating direct communication between the international community and Guatemalan political actors on the peace agenda and its potential for channelling cooperation efforts towards consolidation of the peace process after MINUGUA's departure.

21. The National Transition Volunteers programme is another important component of the transition strategy. Beginning in the third quarter of 2003, up to 60 Guatemalans will eventually be brought into MINUGUA, at its headquarters and regional offices, as United Nations Volunteers, with priority being given to indigenous people and to those committed to working in provincial areas. They will receive intensive training, both formal and on-the-job, in the methodologies developed over the years by the Mission in the fulfilment of its mandate. The programme, in effect, will integrate these Guatemalan United Nations Volunteers, as soon as they are sufficiently trained, into the Mission's substantive activities, including its verification work. The Mission will seek formal agreements with the Ombudsman, key human rights and indigenous organizations and other appropriate institutions with the aim of facilitating the volunteers' employment once the Mission has ended. Financed with some of the funds remaining in the MINUGUA Trust Fund, the programme will contribute to strengthening national capacities by providing a new generation of professionals with the skills to advance the peace agenda in the post-MINUGUA period.

III. Proposed structure and staffing of the Mission in 2004

22. In 2004, in accordance with its mandate, MINUGUA will continue to verify compliance with the peace agreements, offer good offices, provide technical assistance and inform the public about its activities and the results of its verification. This will be done, however, with sharply defined priorities, given both budgetary constraints and advances in the transition process in 2003.

23. Whereas in 2003 the Mission has verified four broad areas of the peace agreements (human rights; demilitarization and the strengthening of civilian power; indigenous rights; and socio-economic aspects), in 2004 only the first two will be subject to verification. Human rights verification will be strictly limited to high-profile and high-impact cases, and whenever possible, will be done in close cooperation with the Office of the Human Rights Ombudsman. Verification of demilitarization and the strengthening of civilian power will focus on strategic aspects of the role of the National Civilian Police, as well as doctrinal, educational, deployment and budgetary reform of the military. Work with new Government authorities will be prioritized to encourage continued implementation of the peace agenda. Technical assistance will be focused on reinforcing key capacity-building efforts with transition partners begun in 2003, providing in-house training of Guatemalan United Nations Volunteers and continuing support for legislative initiatives through the Programme of Institutional Assistance for Legal Reform. The Office of the Spokesperson will continue to support all of these aspects, reinforcing especially the work with the new Government authorities.

24. The Mission will aim to carry out these priorities with a greatly reduced budget. The number of international staff is slated to drop by 43 per cent by the end of 2003, while total staff cuts will reach 56 per cent. The international United Nations Volunteers programme has been almost entirely closed out, as numbers dropped by 93 per cent in the same period. Consistent with the phase-out process, Mission headquarters will be pared down, relocated and restructured, beginning in late 2003, to permit savings and reflect lower staffing levels, while striving to retain sufficient strength to cover priorities. Three subregional offices (Cantabal, Coatepeque and Nebaj) will be closed, while the six regional offices (Cobán,

Guatemala, Petén, Quetzaltenango, Quiché and Zacapa) and two other subregional offices (Huehuetenango and Sololá) will be maintained. Additional territorial coverage will be provided, as needed, by visits from the closest regional office. This will allow the Mission to reinforce strategic aspects of its capacity-building efforts with national and local actors for the transition, work with newly named authorities at all levels on the peace agenda, maintain nationwide coverage and retain some verification capacity. In addition, given that the country's institutional weaknesses continue to be most pronounced in the countryside, Mission presence in the field through the end of 2004 will provide a safety net.

25. Mission headquarters will be staffed to ensure capacity for the work with new authorities of the central Government on the peace agenda, to concentrate reporting capacity and to increase the level of political information provided to United Nations Headquarters. This will be done by strengthening the Office of the Political Adviser, which will advise the Special Representative of the Secretary-General on overall Mission policy, coordinate the Mission's analysis and reporting directed to United Nations Headquarters and generate strategies for working with new Government authorities, the Commission to Follow up the Implementation of the Peace Agreements and other peace institutions. An economic and social policy adviser will ensure follow-up on key budget and fiscal issues, provide technical support to the United Nations country team and thematic working groups and serve as the Mission's focal point for the UNDAF process.

26. The Office of the Spokesperson, with fewer staff, will continue to play a key role in publicizing peace-process achievements and information on the Mission's transition and withdrawal. The Transition Unit, while smaller, will continue to provide strategic advice and monitor benchmarks in the transition process, coordinate follow-on with the Office of the Human Rights Ombudsman and work with the country team and bilateral cooperation agencies to ensure political, technical and financial support for national transition partners.

27. Reflecting MINUGUA priorities, Mission headquarters will retain two thematic Advisory Units in 2004 — on Human Rights and Demilitarization and Strengthening Civilian Power. The Advisory Unit on Human Rights will focus on four areas: coordination between headquarters and field verification of serious human rights violations, in conjunction with the Office of the Human Rights Ombudsman; working with the new central Government authorities on legislative and reform recommendations on human rights and justice issues; supporting OHCHR; and concluding transition programmes with the Office of the Human Rights Ombudsman and human rights non-governmental organizations.

28. The Advisory Unit on Demilitarization and Strengthening Civilian Power will work with the new Government authorities on the institutional and legislative aspects of the demilitarization process; support civil society organizations that work on public security, intelligence and defence issues; and, with UNDP, reinforce the capacities of the National Civilian Police, in follow-up to work previously supported by the MINUGUA Trust Fund.

29. The Advisory Units on Indigenous Rights and on Economic Policy and Rural Development will be phased out in 2003, as they complete transition plans and follow-up mechanisms are put into place. In large measure, technical assistance and the good offices role concerning indigenous rights will be absorbed by OHCHR. The Advisory Unit on Economic Policy and Rural Development has strengthened the

capacities of State and civil society organizations in 2003 to advance key policy and legislative initiatives and build oversight capacities. In addition, UNDP will provide follow-on technical assistance on several issues, and the United Nations country team will provide annual monitoring on pending socio-economic commitments. The Mission History and Lessons Learned Unit finished its work in September 2003.

30. The work of MINUGUA's field offices will centre on the priority areas of human rights and demilitarization. With the Office of the Human Rights Ombudsman, they will verify high-impact human rights cases, monitor, analyse and report on developments in the regions related to the peace process; provide information and analysis on the peace agenda to newly elected local authorities and use good offices to facilitate relations between new local authorities and civil society organizations; provide limited follow-up for capacity-building with priority transition partners; and project the Mission's messages regarding the importance of the continuity of the peace process at the regional level. Maintaining territorial coverage permits continuation of the only reliable, countrywide source of information, which has served Guatemalan society and the international community since the Mission's establishment. This will be vital in the phase-out and transition period as the new Government assumes its functions.

31. Each regional office will be headed by an international professional with extensive experience in the region, and its staff will include either an international United Nations Volunteer or a police observer. Subregional offices will also be led by experienced international professionals. All field offices will be staffed by Guatemalans recruited as part of the National Transition Volunteers programme. These volunteers will partially compensate for the reduction of other international personnel currently in the field. They will be closely supervised by the remaining international staff as they are integrated into the Mission's verification activities and other substantive work.

32. By the end of 2003, the Mission's once large portfolio of technical assistance projects supported by its Trust Fund will be closed, and it is expected that in 2004 only two initiatives will still be in operation with Trust Fund moneys. MINUGUA is seeking support to extend the Programme of Institutional Assistance for Legal Reform into 2004, as its extensive contacts and knowledge of peace accord legislative initiatives will provide significant support to the Mission's political focus next year, especially work in the new Congress. In addition, it is expected that the National Transition Volunteers programme will be financed by the Trust Fund and implemented directly by the Mission.

IV. Observations

33. The year 2004 will be decisive for the future of the peace process in Guatemala. A new Government will take office, the third since the Agreement on a Firm and Lasting Peace was signed on 29 December 1996. It will face the weighty responsibilities of advancing the broad agenda for democratization laid out in the peace agreements. These future responsibilities make it all the more crucial that the 2003 elections take place in a climate of tolerance, non-violence and transparency, with absolute regard for the fairness and legality of the proceedings. It is my fervent hope that all of the newly elected public officials will act on the commitments made

by the political parties in July 2003, under the auspices of the Organization of American States, to assume the peace agreements as accords of State.

34. I am concerned that progress in the implementation of the peace agreements has repeatedly fallen short of expectations and of the urgent needs of the Guatemalan people. The profound inequalities; entrenched impunity; ongoing polarization; continued threats against justice workers, human rights defenders, journalists and other activists; and persisting weaknesses in the justice system and public security institutions make it difficult for many in society to perceive the benefits of peace in their everyday lives. The new Government, together with civil society and the private sector, must work with increased energy and commitment to break out of these patterns and lead the country into a new period characterized by the rule of law and full human development.

35. In preparation for the end of its mandate, MINUGUA focused a large part of its efforts and resources in 2003 on strengthening the capacities of Guatemalan State institutions and civil society organizations to advance the reform and legislative agenda derived from the peace accords. In general, I have been encouraged by the renewed enthusiasm and commitment of the Guatemalan counterparts of MINUGUA throughout the country, as they assume the challenges of the peace process in its next phase. Future technical assistance, especially in the country's interior, will be crucial in order to further strengthen their skills and consolidate their participation.

36. Special attention has been given to the Office of the Human Rights Ombudsman, which will assume greater monitoring responsibilities at the end of the MINUGUA mandate. I call on the Government of Guatemala to provide the Ombudsman with the additional resources needed to fulfil his obligations and also encourage Member States to intensify their support.

37. In view of the remaining challenges for the peace process [illegible] out in the present report and in my verification report (A/58/267), in particular the importance of working with new Government authorities to ensure their commitment to the peace agreements, I recommend that the General Assembly authorize the renewal of the MINUGUA mandate from 1 January to 31 December 2004. To realize the work derived therefrom, I call on the Member States to allocate the necessary resources. During the mandate period, I shall continue to report to the Assembly on Guatemala's compliance with the peace agreements and further progress on the Mission's phase-out process, and identify actions that should be taken by the international community to ensure future progress on the peace agenda and the consolidation of the advances already achieved.

United Nations A/58/263

General Assembly

Distr.: General
8 August 2003

Original: English

Fifty-eighth session
Item 85 of the provisional agenda*
Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan

Report of the Secretary-General

1. The present report is submitted in pursuance of General Assembly resolution 57/126 of 11 December 2002, the operative part of which reads as follows:

> "*The General Assembly*,
>
> "...
>
> 1. *Reaffirms* that Israeli settlements in the Palestinian territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development;
>
> 2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[1] to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan and to abide scrupulously by the provisions of the Convention, in particular article 49;
>
> 3. *Reiterates its demand* for the complete cessation of all Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, including the construction of the settlement in Jabal Abu-Ghneim;
>
> 4. *Stresses* the need for full implementation of Security Council resolution 904 (1994) of 18 March 1994, in which, among other things, the Council called upon Israel, the occupying Power, to continue to take and implement measures, including confiscation of arms, with the aim of preventing illegal acts of violence by Israeli settlers, and called for measures to be taken to guarantee the safety and protection of the Palestinian civilians in the occupied territory;

* A/58/150.
[1] United Nations, *Treaty Series*, vol. 75, No. 973.

03-47346 (E) 030903

5. *Reiterates its calls* for the prevention of all acts of violence by Israeli settlers, particularly in the light of recent developments;

6. *Requests* the Secretary-General to report to the General Assembly at its fifty-eighth session on the implementation of the present resolution."

2. On 10 June 2003, the Secretary-General addressed a note verbale to the Government of the State of Israel, in which he requested, in view of his reporting responsibilities under the above-mentioned resolution, that the Government inform him of any steps it had taken, or envisaged taking, concerning the implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

United Nations A/58/264

General Assembly

Distr.: General
8 August 2003

Original: English

Fifty-eighth session
Item 85 of the provisional agenda*
Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

The occupied Syrian Golan

Report of the Secretary-General

1. The present report is submitted in pursuance of General Assembly resolution 57/128 of 11 December 2002, the operative part of which reads as follows:

> "*The General Assembly*,
>
> 1. *Calls upon* Israel, the occupying Power, to comply with the relevant resolutions on the occupied Syrian Golan, in particular Security Council resolution 497 (1981), in which the Council, inter alia, decided that the Israeli decision to impose its laws, jurisdiction and administration on the occupied Syrian Golan was null and void and without international legal effect, and demanded that Israel, the occupying Power, rescind forthwith its decision;
>
> 2. *Also calls upon* Israel to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan and in particular to desist from the establishment of settlements;
>
> 3. *Determines* that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the occupied Syrian Golan are null and void, constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[1] and have no legal effect;

* A/58/150.
[1] United Nations *Treaty Series*, vol. 75, No. 973.

03-47690 (E) 030903

4. *Calls upon* Israel to desist from imposing Israeli citizenship and Israeli identity cards on the Syrian citizens in the occupied Syrian Golan and from taking repressive measures against the population of the occupied Syrian Golan;

5. *Deplores* the violations by Israel of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;

6. *Calls once again upon* Member States not to recognize any of the legislative or administrative measures and actions referred to above;

7. *Requests* the Secretary-General to report to the General Assembly at its fifty-eighth session on the implementation of the present resolution."

2. On 10 June 2003, the Secretary-General addressed a note verbale to the Government of the State of Israel, in which he requested, in view of his reporting responsibilities under the above-mentioned resolution, that the Government inform him of any steps it had taken or envisaged taking, concerning the implementation of the relevant provisions of the resolution.

3. No reply had been received at the time of the preparation of the present report.

4. By a note verbale dated 10 June 2003, the Secretary-General also drew the attention of Member States to paragraph 6 of General Assembly resolution 57/128.

United Nations A/58/265

General Assembly

Distr.: General
8 August 2003

Original: English

Fifty-eighth session
Item 27 of the provisional agenda*
Zone of peace and cooperation of the South Atlantic

Zone of peace and cooperation of the South Atlantic

Report of the Secretary-General

Contents

		Page
I.	Introduction	2
II.	Replies received from Governments	2
	Argentina	2
	Mexico	5
	Sudan	6
III.	Replies received from organizations and bodies of the United Nations system	6
	A. Department for Disarmament Affairs	6
	B. Department of Public Information	8
	C. International Labour Organization	8
	D. International Maritime Organization	11
	E. United Nations Office on Drugs and Crime	11

* A/58/150.

03-47185 (E) 050903

I. Introduction

1. On 21 November 2001, the General Assembly adopted resolution 56/7, entitled "Zone of peace and cooperation of the South Atlantic", in which it took note of the report of the Secretary-General (A/56/454 and Add.1) and requested the relevant organizations, organs and bodies of the United Nations system to render all appropriate assistance that States members of the zone might seek in their joint efforts to implement the declaration of the zone of peace and cooperation of the South Atlantic. The Assembly also requested the Secretary-General to keep the implementation of resolution 41/11 of 27 October 1986 and subsequent resolutions on the matter under review and to submit a report to the General Assembly at its fifty-eighth session, taking into account, inter alia, the views expressed by Member States.

2. Pursuant to resolution 56/7, the Secretary-General addressed a note verbale, dated 28 April 2003, to the Governments of the States Members of the United Nations requesting their views on the implementation of the declaration of the zone of peace and cooperation of the South Atlantic. On 28 April, letters were also dispatched to the relevant organizations and bodies of the United Nations requesting them to submit their contributions for the preparation of the report of the Secretary-General by 30 June 2003.

3. As at 8 August 2003, three Governments had replied and communications had been received from five of the organizations and United Nations bodies addressed. The replies from Governments are contained in section II and those of the organizations and United Nations bodies in section III of the present report. Any further replies received will be incorporated in an addendum to the report.

II. Replies received from Governments

Argentina

[Original: Spanish]
[26 June 2003]

1. The Argentine Republic believes that the zone of peace and cooperation of the South Atlantic, as the sole interregional mechanism grouping together countries of South America and Africa, provides an appropriate framework for ongoing consultations on issues of mutual interest, enabling them to progress towards the achievement of their objectives as set forth in General Assembly resolution 41/11.

2. While reaffirming the importance of the purpose of the zone as the basis for the development of cooperation among the countries of the region, Argentina also believes that it is necessary to renew and strengthen its content. Argentina firmly continues to believe that the objectives of peace and cooperation for which the zone was established will be attained only when the institutions of representative democracy are fully operative and when respect for human rights and fundamental freedoms is attained in the countries of the region. In addition, Argentina believes that the zone represents an appropriate forum for providing those nations which so request with tools for cooperating in the peaceful settlement of conflicts.

3. The Argentine Republic, because it has a special interest in building peace and security and in promoting a cooperative relationship among the States members of the zone, has assumed the role of coordinator of the zone's Standing Committee. In this context, it has proposed a series of actions with the aim of making progress in the various areas of the Buenos Aires Plan of Action, adopted at the fifth meeting of States members of the zone, held at Buenos Aires on 21 and 22 October 1998 (see A/53/650, annex). With this in mind, Argentina has pointed out the potential of holding political consultations among the States members of the zone concerning issues of mutual interest addressed by the United Nations. In this context, it is convinced that the zone can be a valuable forum for support and promotion of democracy in the South Atlantic. In accordance with the Buenos Aires Plan of Action, Argentina considers it appropriate to renew its commitment to promoting and strengthening ties between the States members of the zone through intensified exchanges of information from each country, including political, economic, social and cultural aspects.

4. With regard to human rights, it is interested in exchanging information on the national activities and plans scheduled to follow up the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, adopted in Durban, South Africa, on 7 September 2001.

5. Argentina attributes great importance to the New Partnership for Africa's Development (NEPAD) initiative. To that end, its Minister for Foreign Affairs participated in the United Nations General Assembly high-level plenary meeting on the New Partnership, held in New York on 16 September 2002. The Argentine statement expressed full support for the development strategy of the African Union, in keeping with its policy of giving priority to its bilateral relations with the African continent. It also emphasized Argentina's contributions to Africa in the areas of peacekeeping, humanitarian assistance, good governance and technical cooperation for development. Argentina also noted that the zone is an appropriate body for channelling initiatives designed to deepen cooperation among its member countries. In that connection, it stated that it had strengthened its political ties with Africa and was determined to increase them in the medium-term through continued dialogue and bilateral cooperation.

6. With specific regard to cooperation with Africa in peacekeeping operations, Argentina would like to point out that, among other missions on the African continent, it has been participating since 2002 in the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) through the provision of three national gendarmerie officers.

7. With regard to strengthening commercial ties in the zone, the Framework Agreement for the Creation of a Free Trade Area between South Africa and MERCOSUR was signed on 15 December 2000 in Florianopolis, Brazil, and in October 2001 the first meeting of the Negotiating Committee of the Framework Agreement was held in Montevideo. During the meeting it was decided to exchange information between the regional bloc and South Africa. In June 2002, the first joint MERCOSUR trade mission to South Africa took place, headed by the Secretary of State for Trade and International Economic Relations of the Argentine Republic, Ambassador Martín Redrado. In the same month, Argentina, as a member country of the regional bloc, took part in the second meeting of the Negotiating Committee of

the Framework Agreement in Brasilia. In December 2002, the third meeting of the Framework Agreement was held in Pretoria.

8. Concerning the prevention of drug abuse and combating drug trafficking and related crimes (see Buenos Aires Plan of Action, paras. 7 and 8), it should be noted that Argentina and the Republic of South Africa signed an agreement on cooperation and mutual assistance to combat the illicit production and trafficking of narcotic drugs and psychotropic substances, drug abuse and related topics, which entered into force on 9 May 2000. In this context, Argentina has proposed that the exchange of information among the different States of the zone should be expanded and intensified in areas including: the trafficking of narcotic drugs and psychotropic substances; the reduction of drug demand through prevention and assistance programmes; and the reduction of supply and chemical precursors. In this context, and in view of the next ministerial meeting of States members of the zone, States may achieve intra-zone modalities of cooperation for the purpose of developing common initiatives. Regarding technical assistance to combating drug trafficking through specific programmes for the training of officials, Argentina has an ongoing interest in seeing that the parties evaluate and coordinate proposals for submission to the United Nations International Drug Control Programme (UNDCP).

9. In connection with paragraph 9 of the Buenos Aires Plan of Action, and mindful of the adoption of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Argentina continues to be interested in exploring, together with the countries of the region, the status of implementation of the Programme in order to exchange points of view concerning countries' experiences. In particular, it remains willing to exchange experience on the registering of civilian and military weapons and the legislative situation concerning intermediaries.

10. The Argentine Republic believes that the States members of the zone should coordinate their positions in the framework of the Meeting of States Parties to the 1982 United Nations Convention on the Law of the Sea, as part of the Consultative Process on oceans and the law of the sea established by General Assembly resolutions 54/33 of 24 November 1999 and 57/141 of 12 December 2002. Argentina considers it highly desirable that the States members of the zone should become parties to the conventions of the International Maritime Organization (IMO) concerning the marine environment, the safety of navigation and the safety of life at sea.

11. The States members of the zone are once again urged to continue working to strengthen the legislation governing the maritime transport of radioactive and dangerous wastes, bearing in mind the interests of the coastal States, in accordance with the United Nations Convention on the Law of the Sea and the regulations of IMO and the International Atomic Energy Agency (IAEA).

12. The Argentine Republic considers the entry into force, on 24 April 2003, of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Food and Agriculture Organization of the United Nations (FAO) on 24 November 1993, to be a contribution to achieving the objective of responsible fisheries. In this context, Argentina welcomes the accession of Ghana, on 12 May 2003, by which it joined Argentina, Benin, Namibia and Uruguay as States members of the zone of peace and cooperation in the South Atlantic in ratifying the Agreement, which is designed to

avoid dual registration of vessels. The States of the region have undertaken to cooperate among themselves in the exchange of information on the registry of fishing vessels flying their flags.

13. In the area of cooperation to combat international terrorism, in accordance with Security Council resolution 1373 (2001) and other relevant resolutions, the States of the zone should become parties to the international instruments on action to combat terrorism and should adopt the necessary measures for their effective implementation, including the establishment in their domestic legislation of penalties applicable to the offences set forth in those instruments. Argentina is a party to nine Conventions and has begun the process of ratifying the remaining instruments.

14. The Argentine Republic considers that the entry into force of the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2002, and its Additional Protocols, will contribute to the prevention and eradication of transnational organized crime, in particular the trafficking of persons, especially women and children, the smuggling of migrants by land, sea and air and the illicit manufacture and trafficking of firearms. For this reason, it believes that the States members of the zone should sign and ratify the above-mentioned instruments. Similarly, the Argentine Republic supports the exchange of experience and knowledge on the subject, in both the areas of capacity-building and training as well as any operative aspects that the States members of the zone may identify as being of mutual interest.

15. It is important to note that the colonial situation of the Malvinas Islands, South Georgia and the South Sandwich Islands persists in the South Atlantic and affects the territorial integrity of the Argentine Republic. Argentina expresses its satisfaction at the level reached in general bilateral relations with the United Kingdom of Great Britain and Northern Ireland. Nevertheless, despite Argentina's efforts in favour of dialogue and a peaceful and definitive solution to the Malvinas Islands question, its commitment to respect the mode of living of the inhabitants of the Islands and the international community's repeated calls for a negotiated solution, it has not been possible to resume negotiations to end the sovereignty dispute. The Argentine Republic considers that resolving this important problem will make it possible permanently to consolidate stability and cooperation in the South Atlantic.

Mexico

[Original: Spanish]
[3 June 2003]

1. The Government of Mexico supports efforts to consolidate the zone of peace and cooperation of the South Atlantic. Mexico believes that zones of peace also promote disarmament, non-proliferation, the implementation of confidence-building measures, socio-economic development and protection of the environment. Greater cooperation and dialogue among the various zones of peace will help to achieve specific common objectives, such as denuclearization, eradication of the illicit trade in small arms and light weapons, preservation of seas and oceans and the combating of drug trafficking, illegal fishing and other forms of transnational organized crime.

2. The Government of Mexico considers that, in order to achieve the objectives of the zone of peace and cooperation of the South Atlantic, it is essential that support be provided by the programmes and the specialized agencies of the United Nations system, especially the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations International Drug Control Programme (UNDCP), as well as by regional organizations such as the Organization of American States (OAS) and the African Union.

Sudan

[Original: English]
[19 May 2003]

The Government of the Republic of the Sudan fully abides by and is committed to the implementation of the General Assembly resolution 41/11 and its subsequent resolutions on this matter. In this regard, the Government of Sudan has taken the following measures: enforcement of existing laws and the promulgation of new regulations in view of consolidating its efforts to combat trafficking in small arms and drugs; exchange of experiences and promotion of cooperation and coordination with neighbouring countries; and active participation in all regional meetings (African region and Arab region) related to combating trafficking in small arms and drugs.

III. Replies received from organizations and bodies of the United Nations system

A. Department for Disarmament Affairs

1. Since the submission of the last report on the zone of peace and cooperation of the South Atlantic to the fifty-sixth session of the General Assembly (A/56/454), several States in the South Atlantic region have signed, acceded to or ratified multilateral disarmament treaties and conventions. Nigeria and Equatorial Guinea became States Parties to the Treaty of Pelindaba on the Nuclear-Weapon-Free Zone in Africa. The ratification of the Treaty of Tlatelolco by Cuba, which has also ratified the Treaty on the Non-Proliferation of Nuclear Weapons, has led to the consolidation of the Nuclear-Weapon-Free Zone in Latin America and the Caribbean. The Comprehensive Nuclear-Test Ban Treaty has been ratified by Sierra Leone, Uruguay, Costa Rica, Nigeria, Venezuela and Côte d'Ivoire. Cameroon has signed the Treaty. The Mine Ban Convention has been ratified by Angola, Cameroon, Gambia and Suriname, and the Democratic Republic of the Congo and Nigeria have acceded to the convention.

2. On 14 March 2002, a seminar, "Nuclear disarmament and non-proliferation issues: towards the 2005 NPT Review Conference" was organized at Headquarters by the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean for the Latin America and Caribbean Group.

3. On 29 April 2003, the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean and the United Nations Department for Disarmament Affairs signed a memorandum of understanding setting out the legal framework for cooperation between the Agency and the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean. The Parties agreed to facilitate cooperation by developing and implementing programmes, projects and initiatives designed to assist the relevant administrations of States under their respective mandates in relation to the promotion of the strengthening of the Nuclear-Weapon-Free Zone in Latin America and the Caribbean, as well as to improve the level of cooperation and the exchange of information between them. The Parties also undertook, inter alia, to cooperate in the establishment of databases, training programmes and communication.

4. A meeting to prepare the first "Training the trainers investigative techniques" course was organized in San Jose, Costa Rica, from 2 to 6 June 2003, to improve control over the commercial trade of firearms and ammunition and eradicate their illicit trafficking in the region. The course, organized by the United Nations Regional Centre in cooperation with the Inter-American Drug Abuse Control Commission, the United Nations affiliated University for Peace and the International Criminal Police Organization (Interpol), will train officials from the police, customs, intelligence and armed forces from countries in the region to act as instructors for a series of training courses and will cover issues, including human security, legal instruments, investigation, firearms trafficking routes, weapons destruction, stockpile management, distance learning and other issues related to the legal commerce and illicit trafficking in firearms and ammunition (e.g. drugs, terrorism and money-laundering). Two further courses on intelligence and international cooperation will be organized over a period of four years with the objective of training some 800 law enforcement officials in the region. The development of the courses will also be supported by the national police of Costa Rica and Uruguay in their respective capitals.

5. The United Nations Regional Centre also supported the actions of various countries in Latin America in destroying seized firearms and ammunition and improving their stockpile management. In July 2002, 10,000 firearms were destroyed in Rio de Janeiro, and between August and November 2002 a total of 5,004 firearms and 8,263 rounds of ammunition were destroyed in Mendoza, Argentina. In December 2002, 2,573 firearms were destroyed in Lima. These activities were part of the Centre's "2006 Lima Challenge", and were carried out in cooperation with UNDP, the Inter-American Drug Abuse Control Commission, the Royal Canadian Mounted Police and other partners in the region.

6. The Department for Disarmament Affairs, including the Regional Centre for Peace and Disarmament in Africa, provided substantive support for, and participated in, the "Seminar for African States on the non-proliferation of nuclear weapons: the role of safeguards agreements and additional protocols", convened by IAEA from 24 to 27 June 2002 in Johannesburg. The seminar aimed at deepening understanding of the role that comprehensive safeguards agreements and additional protocols play in consolidating and strengthening the non-proliferation of nuclear weapons. The Regional Centre for Peace and Disarmament in Africa also organized, in cooperation with the secretariat of the Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty Organization, a workshop to promote early entry into force of the Comprehensive Nuclear-Test Ban Treaty from 13 to 15 November 2002 in Dakar.

7. Within the framework of the Programme of Action on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, the United Nations Regional Centre for Peace and Disarmament in Africa provided support to the African Conference on the Implementation of the United Nations Programme of Action on Small Arms: Needs and Partnerships, held in Pretoria from 18 to 21 March 2002.

B. Department of Public Information

1. The activities carried out by the United Nations information centres in the region of the South Atlantic included: seminars, panels and press conferences on peace and security (Buenos Aires, Lagos, Lomé, Rio de Janeiro and Yaoundé); seminars, lectures, conferences, interviews and workshops on peacekeeping (Accra, Buenos Aires, Lagos, Rio de Janeiro and Yaoundé); videoconferences, interviews, radio programmes and the broadcast of a film on disarmament (Buenos Aires, Dakar, Lomé, Rio de Janeiro and Windhoek); press releases, interviews, news articles and a television programme on humanitarian assistance (Accra, Lagos, Rio de Janeiro and Yaoundé); radio and television programmes, musical concerts, press conference and book fair on refugees (Dakar, Lagos and Yaoundé); interviews, press conferences and a televised panel discussion on human rights and other observances of Human Rights Day (Accra, Buenos Aires, Dakar, Lagos and Rio de Janeiro); workshops and launching of reports on economic development (Accra, Buenos Aires, Dakar, Lagos, Rio de Janeiro, Yaoundé, and Windhoek); seminars, public service announcements, and a television programme on drugs (Accra, Lagos and Yaoundé); observances of international day of peace, year against racism and decade for peace (Accra, Buenos Aires, Lagos, Lomé and Rio de Janeiro).

2. The 2001 Department's training programme for broadcasters and journalists from developing countries was held from 10 September to 19 October, with Equatorial Guinea among the countries participating. The 2002 programme was held from 9 September to 18 October, with Cape Verde and Paraguay among the countries participating. Guinea-Bissau has been selected for the next programme, to be held from 8 September to 17 October 2003.

3. Both the 1999 volume of the *Yearbook of the United Nations*, which was published in January 2002, and the 2000 volume, published in November 2002, cited the Secretary-General's reports on the zone of peace and cooperation of the South Atlantic and related reports submitted by States or regional groups. The volumes also reproduced the full texts of General Assembly resolutions 54/35 of 15 November 1999 and 55/49 of 29 November 2000, entitled "Zone of peace and cooperation of the South Atlantic".

C. International Labour Organization

1. With regard to the countries along Africa's South Atlantic coast that fall within the competence of the ILO subregional office for Central Africa (Angola, Cameroon, the Congo, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, and Sao Tome and Principe), numerous initiatives have been undertaken within the ILO areas of responsibility in partnership with the countries covered. Those efforts contribute directly or indirectly to peace and cooperation among the countries of the region. ILO's efforts do contribute either to conflict prevention or to

consolidation of peace, in keeping with the original mandate of the Organization, which was created in 1919 to promote peace through social justice.

Promotion of basic labour rights

2. In Central Africa, ILO has undertaken a successful campaign for the ratification of conventions relating to: basic labour rights; elimination of discrimination in respect of employment and occupation; abolition of child labour, in particular its worst forms; elimination of forced labour; and freedom of association and collective bargaining.

Technical cooperation activities at the national and subregional levels have supported implementation of those conventions, for example:

(a) Three subregional programmes to eliminate the worst forms of child labour (trafficking in children, drafting of children into armed conflicts, exploitation of child labour on plantations);

(b) Two joint programmes to promote the rights of indigenous and tribal peoples (in particular pygmies) and their socio-economic integration;

(c) Subregional consultation and development of a programme to promote the rights and socio-economic integration of migrant workers;

(d) Subregional consultation and national programmes to eliminate job discrimination against persons affected by HIV/AIDS and to include anti-discrimination provisions in the future Organization for the Harmonization of Business Law in Africa uniform act on the right to work.

Job creation, social protection and socio-economic integration

3. In the context of the Infocus Programme Crisis Response and Reconstruction, the Employment-Intensive Investment Branch and the Strategies and Tools against Social Exclusion and Poverty Programme on the extension of social protection, ILO has contributed to the development of policies and strategies on job creation, training and the optimalization of employment through national investment programmes as well as to the development and implementation of socio-economic integration programmes for youth, disadvantaged groups, groups affected by conflict and former combatants (adults or children), for example:

(a) Support to Governments for the development, implementation and evaluation of employment and labour policy, in consultation with social partners;

(b) Three subregional seminars on employment and public investment programmes, which led to the development and/or implementation of urban or rural infrastructure programmes (Congo, the Democratic Republic of the Congo and Cameroon) which stressed employment (high intensity manpower);

(c) Participation in the development of reintegration programmes for groups affected by conflicts, within the context of the Multi-Country Demobilization and Reintegration Programme, in particular in Angola and the Democratic Republic of the Congo;

(d) Implementation of a pilot programme for vulnerable groups and for reintegration of ex-combatants in the Democratic Republic of the Congo;

(e) Organization of a study and development and implementation of a reintegration programme for children involved in armed conflicts, in particular for Congo and the Democratic Republic of the Congo;

(f) Support for the development of entrepreneurship (microenterprises and cooperatives) and of microfinance within the context of programmes in Cameroon, Sao Tome and Principe and the Democratic Republic of the Congo; specific initiatives to promote entrepreneurship by women (Cameroon and Sao Tome and Principe);

(g) Increasing the awareness of social protection systems aimed at the needs of the majority of the population and support for the creation of mutual benefit societies in the health sector (Cameroon, Angola, Congo and the Democratic Republic of the Congo), which are still in their early stages but should grow rapidly. Combating HIV/AIDS is also a priority.

Social dialogue

5. In a context such as Central Africa, ILO activities to promote social dialogue and strengthen the capacity of social partners (labour authorities and employers and workers organizations) are strongly oriented towards conflict prevention, resolution of conflict through negotiation, institutionalization of dialogue, the practice of social democracy and partnership, and the promotion of social governance mechanisms based on respect for the principle of representation for social partners.

6. Indeed, in many countries, social partners not only play an important role in the resolution of social conflicts, their experience is often also called upon to settle crises and conflicts at the national and subregional levels. Crises and armed conflicts in any case always have origins and/or consequences which involve social factors.

7. Some examples of the activities of ILO are:

(a) National and subregional level support and training for employers and workers organizations (all countries);

(b) Organization of reviews of labour authorities and training to strengthen capacity, in particular in the area of labour inspection, prevention and settlement of conflicts, organization of tripartite consultations and functioning of tripartite bodies; in this area, ILO often works in collaboration with the African Regional Labour Administration Centre in francophone countries;

(c) Two subregional programmes to promote social dialogue: the ILO/Belgian programme on social dialogue in French-speaking Africa, which is active in the subregion, particularly in Cameroon, Gabon, Equatorial Guinea, Congo and the Democratic Republic of the Congo; and the ILO/Portugal programme on social dialogue in Portuguese-speaking countries, including Angola and Sao Tome and Principe; those programmes contribute to the institutionalization of social dialogue and the strengthening of the capacity of social partners for the prevention and settlement of conflicts;

(d) In the next few months, a project aimed at promoting social dialogue for peace and development in southern Africa will also be launched in Angola.

8. Finally, it should be pointed out that ILO also seeks to promote subregional integration and solidarity. In Central Africa, in the context of the programme on

social dialogue in French-speaking Africa, the Central African Economic and Monetary Community has already organized meetings of ministers of labour from the subregion and there is a Central African association of employers, an umbrella group of employers, in the subregion; the Central African Economic and Monetary Community is sponsoring the creation in the near future of a subregional workers organization to serve as a subregional umbrella group for unions. An organized tripartite dialogue will therefore become possible, promoting cooperation and consolidation of social peace and development at the subregional level.

D. International Maritime Organization

The International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships was adopted by a resolution of the Maritime Safety Committee on 27 May 1999. The International Code, a mandatory instrument under the International Convention for the Safety of Life at Sea 1974, entered into force on 1 January 2001 for all contracting Governments party to the Convention.

E. United Nations Office on Drugs and Crime

1. The General Assembly, in paragraph 9 of resolution 56/7, expressed concern about the increase of drug trafficking and related crimes, including drug abuse, and called upon the international community and the States members of the Zone to promote regional and international cooperation to combat all aspects of the problem of drugs and related offences. In paragraph 7, the Assembly also affirmed the importance of the South Atlantic to global maritime and commercial transactions and its determination to preserve the region for all peaceful purposes. The Commission on Narcotic Drugs is the principal policy-making body within the United Nations system on drug control issues and the Commission on Crime Prevention and Criminal Justice formulates international policies and recommendations in the field of crime control. The Commissions have mandates of relevance to the Declaration on the Zone of Peace and Cooperation of the South Atlantic. The United Nations Office on Drugs and Crime provides substantive and administrative support to the work of both Commissions.

1. International drug control

Commission on Narcotic Drugs: Ministerial Segment

2. The forty-sixth session of the Commission on Narcotic Drugs, held in Vienna from 8 to 17 April 2003, undertook an assessment of the world drug problem at a ministerial-level meeting, which considered the progress achieved and the difficulties encountered in meeting the goals set out at the twentieth special session of the General Assembly, held in 1998. In the Joint Ministerial Statement, ministers and government representatives recognized that the drug problem undermines socio-economic and political stability and sustainable development, including efforts to reduce poverty, and causes violence and crime, including in urban areas. It was recommended, inter alia, that States should strengthen international cooperation among judicial and law enforcement authorities at all levels in order to prevent and combat illicit drug trafficking. States should bear in mind its linkages to terrorism

and other national and transnational criminal activities. They should share best operational practices in order to interdict illicit drug trafficking, including by establishing and strengthening regional mechanisms, providing technical assistance and establishing effective methods or cooperation, particularly in the areas of air, maritime and port control (see sect. E, judicial cooperation).

Combating illicit traffic by sea

3. UNODC supports countries in combating illicit drug traffic by sea by preparing practical guides for competent national authorities on the implementation of article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. It also updates and publishes on a quarterly basis the directory of competent national authorities under articles 7 and 17 of the 1988 Convention.

Activities of the United Nations Office on Drugs and Crime in Africa

4. The United Nations Office on Drugs and Crime cooperated with the African Union in organizing the Ministerial Conference on Drug Control in Africa, held in Yamoussoukro, Côte d'Ivoire, in May 2002. The resulting plan of action for drug control in Africa covering the period from 2002 to 2006 was subsequently endorsed by the Assembly of Heads of State and Government of the African Union. The plan defines the responsibilities of member States, regional and international organizations and civil society in implementing priorities. It is based on the principle of integrating and mainstreaming drug control into African development initiatives, including the empowerment of women and poverty alleviation. Furthermore, in August 2002, a programme against drugs and crime was launched for the Southern African Development Community (SADC), representing 11 States. In addition, a seaport control initiative of the Office and the Customs Cooperation Council for East and Southern Africa was extended to include new port control teams in South Africa and Mauritius. The Office also continued to support selected treatment and rehabilitation services, including programmes on HIV/AIDS and drug abuse. For example, in late 2002, a pilot project on local expert networks for demand reduction was expanded to cover North and West Africa to provide the knowledge and skills needed to promote demand reduction activities in those countries.

Activities of the United Nations Office on Drugs and Crime in Latin America

5. The United Nations Office on Drugs and Crime has also supported the drug control efforts of countries in the South American area of the Zone. The Office's programme for Brazil and the South Cone countries was elaborated with the respective Governments, based on agreed priorities. For example, the Office supported activities for the prevention of drug-related HIV/AIDS in Brazil. In the area of urban security, it supported the upgrading of the teaching facilities of the Brazilian National Police Academy. A system for precursor control is also under development. The Office continued to cooperate with the signatories of the Southern Cone Memorandum of Understanding on Regional Drug Control Cooperation, including Argentina, Bolivia, Chile, Peru and Uruguay, and with the Inter-American Drug Abuse Control Commission/Organization of American States, in carrying out research on drug abuse, based on common standards.

2. International instruments combating transnational organized crime and terrorism

6. In the area of crime prevention and criminal justice, UNODC assists requesting States to ratify and implement the United Nations Convention against Transnational Organized Crime and its three supplementary Protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Air and Sea; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition. By ratifying the Convention, States commit themselves to adopting a series of crime control measures, including the criminalization of participation in an organized criminal group, money-laundering, corruption and obstruction of justice; extradition laws; mutual legal assistance; administrative and regulatory controls; law enforcement; victim protection; and crime-prevention measures. The fortieth instrument of ratification was deposited with the Secretary-General on 1 July 2003. In accordance with article 38 of the Convention, it will come into force on 29 September 2003, and the Protocols at a later date.

7. In paragraph 3 of resolution 56/7, the Assembly encouraged all States, in particular the members of the Zone of peace and cooperation of the South Atlantic, to cooperate in promoting and strengthening global, regional, subregional and national initiatives to prevent, combat and eradicate the illicit trade in small arms and light weapons. The Protocols will provide an important tool to facilitate the investigation and prosecution of related crimes within the South Atlantic area of the Zone. The Protocol on Firearms, for instance, has been signed by 52 and ratified by four States. In addition, the Protocol on Trafficking in Persons has been signed by 117 and ratified by 28 States. The Protocol on Smuggling of Migrants has been signed by 112 and ratified by 27 States.

8. Furthermore, the Global Programme against Terrorism was launched by the Centre for International Crime Prevention of the United Nations Office on Drugs and Crime, which works under the policy guidance of the Commission on Crime Prevention and Criminal Justice. The Global Programme against Terrorism provides requesting Member States with technical assistance to implement the universal conventions and protocols relating to terrorism, in close coordination with the Counter-Terrorism Committee, the Office of Legal Affairs and other relevant organizations.

3. Centre for International Crime Prevention of the United Nations Office on Drugs and Crime

9. The Centre for International Crime Prevention has assisted and supported national efforts to combat transnational organized crime by providing pre-ratification and implementation assistance for the United Nations Convention against Transnational Organized Crime and its Protocols. It has also provided States members of the Zone with technical assistance in the fight against transnational organized crime, trafficking in human beings and corruption and in the area of crime prevention and criminal justice.

10. Since the adoption of the United Nations Convention against Transnational Organized Crime and its Protocols, the Centre has organized or assisted at: four regional and subregional meetings, in which States members of the Zone

participated to discuss issues relating to ratification and implementation: a ministerial seminar for the Southern African Development Community in Pretoria in 2001; a subregional ministerial seminar for the Economic Community of West African States in Ouagadougou in 2001; a regional ministerial seminar in Ecuador in 2002; and a ministerial conference for the African region in Algiers in 2002. Declarations adopted at the regional meetings strongly encouraged participating countries that had not signed the instruments to do so, and to ratify them if they had already been signed. Pre-ratification assistance has also been undertaken to assist individual countries, including Angola, Cape Verde, Guinea-Bissau and Nigeria. The Centre has received, and is in various stages of responding to, requests for assistance from several other countries in the Zone.

11. Besides pre-ratification and implementation assistance, a number of other technical cooperation activities at both regional and national levels have been undertaken at the request of States members of the Zone, including Benin, Brazil, Côte d'Ivoire, Ghana, Nigeria, Senegal, South Africa and Togo as well as the Economic Community of West African States. The Centre intends to intensify technical cooperation activities and is ready to provide further assistance, subject to the availability of funds, to meet specific needs of the members of the Zone.

United Nations A/58/266

General Assembly

Distr.: General
8 August 2003

Original: English

Fifty-eighth session
Item 119 (b) of the provisional agenda*
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General**

Summary

The present report is submitted pursuant to General Assembly resolution 57/219, "Protection of human rights and fundamental freedoms while countering terrorism". It begins with a review of comments received from Governments and international and non-governmental organizations in response to a letter from the United Nations High Commissioner for Human Rights seeking views and information on the protection of human rights while countering terrorism. The report then provides an overview of rights that have come under significant pressure worldwide as a result of counter-terrorism measures, including the rights to life and to freedom from torture, due process rights and the right to seek asylum. The report concludes with a number of general observations.

* A/58/150.

** The present report was delayed in order to incorporate as much information from Governments as possible.

03-46415 (E) 160903

Contents

		Paragraphs	Page
I.	Introduction	1–3	3
II.	Actions and views of States	4–15	4
III.	United Nations action	16–21	7
IV.	Actions of regional and non-governmental organizations	22–33	8
	A. Regional organizations	23–29	9
	B. Non-governmental organizations	30–33	10
V.	Areas of concern in the protection of human rights while countering terrorism	34–55	11
	A. Right to life	35	11
	B. Right to freedom from torture and cruel, inhuman or degrading treatment or punishment	36–37	11
	C. Conditions and treatment in detention	38	12
	D. Principle of legality	39	12
	E. Pre-trial detention	40–41	12
	F. Right to fair trial	42–43	13
	G. Access to counsel	44	13
	H. Freedom of thought, conscience and religion	45	13
	I. Freedom of expression and assembly	46	13
	J. Freedom from discrimination	47–48	14
	K. Treatment of non-nationals, including asylum-seekers	49–51	15
	L. States of emergency	52–53	15
VI.	Conclusions	54–60	15

I. Introduction

1. In its resolution 57/219 of 18 December 2002, "Protection of human rights and fundamental freedoms while countering terrorism", the General Assembly affirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law; encouraged States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights; and further encouraged them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies.

2. Also in its resolution 57/219, the General Assembly requested the United Nations High Commissioner for Human Rights, making use of existing mechanisms:

(a) To examine the question of the protection of human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all sources;

(b) To make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking actions to counter terrorism;

(c) To provide assistance and advice to States, upon their request, on the protection of human rights and fundamental freedoms while countering terrorism, as well as to relevant United Nations bodies.

3. The General Assembly requested the Secretary-General to submit a report on the implementation of the resolution to the Commission on Human Rights at its fifty-ninth session and to the Assembly at its fifty-eighth session. The present report begins with a review of comments received from Governments and international and non-governmental organizations in response to a letter from the United Nations High Commissioner for Human Rights seeking views and information on the protection of human rights while countering terrorism. The report then provides an overview of areas of concern with respect to the obligation of States to protect human rights while countering terrorism, and concludes with a number of general observations.

II. Actions and views of States

4. On 14 March 2003, the United Nations High Commissioner for Human Rights sent a letter to all Member States, followed by letters to international and non-governmental organizations, seeking views and information relevant to the question of the protection of human rights while countering terrorism. The following responses were received.

5. Colombia referred to an earlier communication it had sent to the Special Rapporteur on terrorism and human rights of the Subcommission on the Protection and Promotion of Human Rights. In that letter, dated 6 March 2003, Colombia characterized terrorism as one of the most worrying threats to international security and considered it imperative to apply the principle of shared responsibility, in the form of mechanisms of cooperation and mutual assistance, as the basis of the international strategy to confront the threat. The Government said that action against

terrorism must conform to existing norms, the principles of the Charter of the United Nations and the Charter of the Organization of American States (OAS), and the principles and values inherent in the rule of law, in particular international and regional human rights norms. It considered it necessary to reach an appropriate balance between the requirement of providing security and protection, on the one hand, and the legal and moral imperative of respecting in all cases the rights and guarantees enjoyed by all. The Government underlined the importance of international cooperation, and noted that it should focus on strengthening intelligence activities and judicial processes that deal with international offences such as terrorism.

6. Costa Rica reiterated its vehement condemnation of terrorism in all its forms, while also stressing the vital importance of conducting the fight against terrorism in strict conformity with international law, and particularly with human rights. Its commitment to peaceful conflict resolution has led it to take initiatives that clearly demonstrate its pacifist position. On terrorism, Costa Rica has firmly supported the need for joint action and coordination among States, while recognizing that each State bears an important responsibility with respect to its own inhabitants, with special attention needing to be paid to persons and groups working in favour of human rights. The integration of these two approaches serves to strengthen the vision of democracy and social justice to which all States Members of the United Nations aspire, and permits international security to be seen as a delicate concept in which social and economic stability plays a major role. Costa Rica noted that it has expressed its condemnation of terrorism and has urged strong action, with strict respect for human rights, at numerous international and regional meetings, has ratified a number of relevant international instruments and has taken concrete action at the national level to confront terrorism.

7. The Czech Republic stated that its participation in the international fight against terrorism is carried out in accordance with its human rights obligations under the international human rights treaties to which it is a party. It summarized rules in the area of criminal law that it considers especially relevant to this issue. In particular, it noted that in matters of extradition, cases must meet certain strict criteria. The principle that the Czech Republic does not extradite its own citizens does not apply in connection with its commitments vis-à-vis international tribunals. The Czech Republic will not extradite a person to a country where he/she would face torture or capital punishment. Regarding the right to privacy, the Czech Republic noted that phone tapping is permitted only in the context of prosecution of an especially grave crime, and only upon court order. The same protection applies to written correspondence. In neither case may the State obtain access to communications between an accused and his lawyer.

8. Finland stressed that terrorism threatens the implementation of human rights, democracy and rule of law, as well as internal and international peace and security. It underlined the importance of international cooperation and collective action as well as respect for human rights and the rule of law in the fight against terrorism. Finland noted that it has ratified the 12 United Nations instruments on aspects of terrorism and the 1977 European Convention for the Suppression of Terrorism and has enacted a broad range of domestic measures. It is duly implementing relevant Security Council resolutions. The Government stated that the promotion of human rights is a fundamental element of its foreign and security policy, and the Finnish Constitution provides that everyone has the right to life, personal liberty, integrity

and security. Under the Constitution, the Parliamentary Ombudsman monitors the implementation of basic rights and liberties, including the implementation of legislation regarding terrorist acts.

9. Germany stated that the fight against terrorism is one of the highest priorities of its foreign policy. The Government has taken various measures to fulfil its international obligations and to contribute to the international war on terrorism with full respect for human rights. German foreign policy is based on the conviction that the fight against terrorism must always be legitimized under international law. Human rights, in particular, must not be violated, since the fight is not only about defending the security of the population, but also about fundamental values such as freedom, democracy and human rights. In accordance with the Constitution of Germany, European human rights norms take precedence over federal law, which ensures that they are respected in the context of counter-terrorism measures that are governed by domestic criminal law. For more information on the subject, the Government referred to the reports it has submitted to the Counter-Terrorism Committee of the Security Council.

10. Malta stated that while striking a balance between the need to protect society from the horrifying effects of terrorism and protecting the fundamental human rights of the individual is not an easy task, it is indispensable if the personal freedom that terrorism seeks to destroy is to be preserved. There is therefore a need for reflection on this issue with a view to articulating agreed guidelines to provide States with clear criteria and elements upon which to design counter-terrorism measures that do not overstep the bounds of what is necessary and lawful in the area of human rights protection. The Government noted that certain human rights instruments allow derogation by States in case of war or other public emergency, and suggested that it may be useful, in the interest of proportionality, to examine the inderogable core of human rights even where derogation may be allowed. In this respect, it noted the relevance of General Comment No. 29 of the United Nations Human Rights Committee on article 4 of the International Covenant on Civil and Political Rights.

11. Mexico emphasized that the obligation of States to combat terrorism and their duty to respect human rights and fundamental freedoms are not mutually exclusive, but rather complementary, since only a system that promotes democratic values, rule of law and protection of the human rights of all can guarantee effective action against terrorism. The fact that a State respects human rights inspires greater confidence in its investigations and judicial decisions, including those concerning persons suspected of terrorist acts. Mexico noted that counter-terrorist measures can be adopted during times of peace as well as during times of emergency or armed conflict, and said that while attention should be given first to the former, all three circumstances should be considered in order to establish a minimum standard of protection. It recommended that the Office of the United Nations High Commissioner for Human Rights, in preparing the present report, consider a number of key questions, including the vulnerability of certain groups (such as migrants, asylum-seekers and minorities) to counter-terrorism measures, adherence to the principle of legality, protection of the due-process rights of the accused, and non-derogable rights in states of emergency or armed conflict. Mexico further provided an overview of measures it has taken to promote respect for human rights by its security forces.

12. Sweden stated that it is working to ensure that efforts to combat terrorism are conducted in conformity with international public law, human rights and the rule of law. It noted that it has ratified all international criminal law conventions for the suppression of terrorism. It welcomed the efforts undertaken in the Counter-Terrorism Committee of the Security Council to promote international cooperation and assistance in the global effort against terrorism. Sweden noted that the Council's adoption of sanctions targeted at individuals and entities, rather than at States or Governments, has triggered an intense debate in Sweden. The country has therefore initiated a discussion with United Nations bodies and the European Union on ways to better safeguard the rights of the individual in such cases, while not compromising the need for swift action to counter terrorism. Sweden believes such issues are important because they may influence public opinion on the trustworthiness of the United Nations, as well as public support for the United Nations and continued efforts against terrorism. Sweden noted that in the framework of the legislative process of the European Union, due consideration is being given to human rights. The Government further referred to national legal safeguards to protect human rights while countering terrorism, noting that under the Constitution, no act of law or other provision may be adopted if it contravenes Sweden's commitments under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

13. Turkey stated that as one of the countries most affected by terrorism, it believes that States should take the necessary measures to prevent and eradicate this scourge. It believes that regional and international cooperation to this end is essential, and noted that it has become a party to all 12 United Nations conventions relating to terrorism. It recalled the difficulties encountered in identifying a universally accepted definition of terrorism, and noted that a comprehensive convention on terrorism would serve an important function for common understanding among States. Turkey further stated that terrorism is aimed at eradicating basic human rights while threatening the territorial integrity and security of States, and is by its very nature a violation of the right to freedom from fear affirmed in the preamble to the Universal Declaration of Human Rights, as well as of its article 3, which asserts the right of all to life, liberty and personal security. It said that the perception that human rights can be violated only by States is not in conformity with article 30 of the Declaration; terrorists, too, can violate human rights. The Government said that emphasis should continue to be placed on the responsibility of States supporting terrorism directly or indirectly, as well as the accountability of non-State actors. Turkey rejects the association of terrorism with any religion, ethnic identity, colour, race or particular geographical area. Finally, it noted the danger that terrorism might be somehow legitimized by arguments linking it to root causes in the social, economic or political conditions of a country, and said it strongly believes that terrorism, whatever its motives, cannot be tolerated.

14. Venezuela reiterated its condemnation of all acts, methods and practices of terrorism committed for whatever motive or objective. It said that such acts harm friendly relations among States, threaten international security and territorial integrity, and destabilize economic and social development. In analysing terrorism, either globally or with respect to specific themes such as human rights, it is essential to underline the lead responsibility of States in the investigation and punishment of terrorist activities. This is necessary so that the bounds of international law are not exceeded, since conferring direct responsibility on international organizations could

result in conflict with national legal orders. This has become evident in the Security Council's treatment of questions over which it lacks clearly defined competencies. Venezuela noted that it has ratified a number of United Nations and OAS instruments relating to terrorism and has signed or is studying several others.

15. The full texts of the replies received are available for consultation in the files of the Secretariat.

III. United Nations action

16. The relevance of human rights to the struggle against terrorism has been a major underlying theme of United Nations action. In remarks to the special meeting of the Counter-Terrorism Committee of the Security Council with international, regional, and subregional organizations, on 6 March 2003, the Secretary-General stated that as terrorism involves the calculated use of violence in violation of the law, the response to terrorism should aim to ensure the rule of law. He continued, "Terrorist acts, particularly those involving the loss of life, constitute grave violations of human rights. Our responses to terrorism, as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism — not privileges to be sacrificed at a time of tension."[1]

17. In follow-up to the report of the Secretary-General's Policy Working Group on the United Nations and Terrorism (A/57/273-S/2002/875, annex), the United Nations expects to publish in September 2003 a digest of jurisprudence of the United Nations and regional organizations, prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), on the subject of human rights and counter-terrorism. Its aim is to assist policy makers and others in developing a vision of counter-terrorism strategies that are fully respectful of human rights. OHCHR has also continued its useful dialogue with the Counter-Terrorism Committee of the Security Council, and has made available to it guidance notes on compliance with international human rights standards for its examination of reports submitted in accordance with Security Council resolution 1373 (2001).[2]

18. United Nations human rights treaty bodies and special procedures continue to pay close attention to the issue of protecting human rights while countering terrorism. As will be seen below, they have issued wide-ranging formal observations and analysis on this issue. Between September 2001, when the Security Council adopted resolution 1373 (2001), and April 2003, for example, the United Nations Human Rights Committee examined the reports of 16 States parties to the International Covenant on Civil and Political Rights, in 7 of which it underlined concerns with respect to counter-terrorism measures. The Committee has often reiterated that States parties must ensure that measures taken to implement resolution 1373 (2001) fully respect the Covenant. An important initiative was the briefing of the Human Rights Committee by a senior staff member of the Counter-Terrorism Committee, in Geneva on 27 March 2003, followed by a briefing of the Counter-Terrorism Committee by the Vice-Chairperson of the Human Rights Committee in New York on 19 June 2003.

19. The United Nations special rapporteurs and representatives, independent experts and chairpersons of working groups, gathered at their annual meeting in

Geneva in June 2003, adopted a statement in which, while joining in the global condemnation of terrorism, they voiced profound concern at the multiplication of policies, legislation and practices increasingly being adopted by many countries in the name of the fight against terrorism, which negatively affect the enjoyment of virtually all human rights: civil, cultural, economic, political and social. They drew attention to the danger inherent in indiscriminate use of the term "terrorism" and the resulting new categories of discrimination. They deplored the fact that, under the pretext of combating terrorism, human rights defenders are threatened, and vulnerable groups are targeted and discriminated against on the basis of origin and socio-economic status, in particular migrants, refugees and asylum-seekers, indigenous peoples and people fighting for their land rights or against the negative effects of economic globalization policies. They stated their commitment, within their respective mandates, to monitor developments, and called on all concerned parties, including the United Nations, to be vigilant to prevent any abuse of counter-terrorism measures.

20. The United Nations High Commissioner for Human Rights addressed the Counter-Terrorism Committee in October 2002, emphasizing his conviction that the best — the only — strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law. He went on to say that we need to invest more vigorously in promoting the sanctity and worth of every human life; we need to show that we care about the security of all and not just a few; and we need to ensure that those who govern and those who are governed understand and appreciate that they must act within the law. OHCHR has notified the Counter-Terrorism Committee of the availability of its technical cooperation programme to assist States in the protection of human rights and fundamental freedoms while countering terrorism.

21. The Office of the United Nations High Commissioner for Refugees (UNHCR) has noted that security concerns since 11 September 2001 have dominated the debate on asylum and have at times overshadowed the legitimate protection interests of individuals. In a policy paper, UNHCR stated that while it endorses all efforts aimed at effectively combating terrorism, it remains concerned that, in the aftermath of 11 September 2001 bona fide asylum seekers may be victimized as a result of public prejudice and unduly restrictive legislation or other measures and that carefully built refugee protection standards may be eroded. UNHCR has also recalled that in dealing with the terrorist threat in the context of asylum, the definition of refugees contained in the 1951 Convention relating to the Status of Refugees explicitly provides for the exclusion from refugee status of those who have committed serious crimes.[3]

IV. Actions of regional and non-governmental organizations

22. The following responses were received from regional and non-governmental organizations to the March 2003 letter of the United Nations High Commissioner for Human Rights, seeking views and information on the issue of protecting human rights while countering terrorism.

A. Regional organizations

23. The African Union provided the High Commissioner with a copy of the comprehensive report it had submitted to the Counter-Terrorism Committee special meeting with international, regional, and subregional organizations, held in New York in March 2003 (see S/AC.40/2003/SM.1/2 and Add.1 and Corr.1 and 2). The report notes, inter alia, the entry into force of the Organization of African Unity Convention on the Prevention and Combating of Terrorism (Algiers Convention) in December 2002. The Algiers Convention contains a provision, in article 22, that States must comply with the general principles of international law, in particular international humanitarian law, and the African Charter on Human and Peoples' Rights. The African Union also provided a copy of its Plan of Action, adopted at the African Union High-level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, held in Algiers in September 2002.

24. The Commonwealth of Independent States (CIS) noted that work has begun to facilitate accession by its member States to all relevant instruments of the United Nations and the Council of Europe on the issue of terrorism. CIS stated that it continues to pay close attention to the questions of human rights and fundamental freedoms in the international struggle against terrorism.

25. The Council of Europe recalled the issuance of its "Guidelines on human rights and the fight against terrorism", adopted by the Committee of Ministers on 11 July 2002. It also informed the High Commissioner of other initiatives, including the elaboration of a Protocol amending the European Convention for the Suppression of Terrorism. The Protocol, opened for signature in May 2003 and already signed by more than 30 States, inter alia, authorizes States to refuse extradition to countries where there is a risk of the death sentence being applied, or of an accused being subject to torture or life imprisonment without parole.

26. The European Commission provided the High Commissioner with a copy of its annual report on the situation of fundamental rights in the European Union, part of which addresses the balance between freedom and security in the response by the European Union and its member States to terrorist threats.

27. The Inter-American Commission on Human Rights (IACHR) published an important special "Report on terrorism and human rights" in October 2002, which offers a comprehensive overview and analysis of this question. In the report, IACHR formulates recommendations to OAS member States in order to guarantee that counter-terrorism measures conform with their international human rights obligations, international humanitarian law and refugee law.

28. The League of Arab States referred the High Commissioner to provisions of the Arab Convention for the Suppression of Terrorism, which entered into force in May 1999. In its preamble, the Convention proclaims the signatories' commitment to the highest moral and religious principles and, in particular, to the tenets of the Islamic Shariah, as well as to the humanitarian heritage of an Arab nation that rejects all forms of violence and terrorism and advocates the protection of human rights. It underlines the signatories' commitment to the Pact of the League of Arab States and the Charter of the United Nations, as well as all other international instruments to which they are parties. The League of Arab States said that several provisions of the Convention serve to protect human rights, including articles 1, 2, 4 and 6.

29. The Organization for Security and Cooperation in Europe (OSCE) informed the High Commissioner of a number of initiatives, including the adoption in December 2001 of the Bucharest Plan of Action, which aims to establish a framework for comprehensive OSCE action by participating States and OSCE as a whole to combat terrorism while fully respecting international law, including the international law of human rights and other relevant norms of international law. In December 2002, the Ministerial Council adopted the OSCE Charter on Preventing and Combating Terrorism. The OSCE Office for Democratic Institutions and Human Rights in Warsaw has appointed a coordinator on anti-terrorism issues, whose mandate includes analysing the human rights dimensions of anti-terrorism measures.

B. Non-governmental organizations

30. Amnesty International informed the High Commissioner that, since the adoption of General Assembly resolution 57/219, it has observed with deep concern that the international climate favouring counter-terrorism has caused many Governments to undermine the collective system of security that international human rights, humanitarian and refugee law represent. In communications with United Nations human rights bodies, Amnesty International has highlighted concerns about the negative impact of counter-terrorism measures on the protection and promotion of human rights in 34 countries. The areas of concern include allegations of arbitrary arrests, incommunicado detentions and deportation of foreign nationals. As part of its submission to the United Nations High Commissioner for Human Rights, Amnesty International provided 12 country-specific documents and reports on alleged human rights violations in the context of the fight against terrorism.

31. The Association pour la prévention de la torture (APT) provided the High Commissioner with a copy of a position paper on the issue, in which it underlined that any derogations from certain rights in the context of counter-terrorism measures are subject to strict limits, including those imposed by the principles of necessity and proportionality. APT underlined that certain rights are non-derogable under all circumstances, including the prohibition against torture and cruel, inhuman or degrading treatment or punishment.

32. The Fédération internationale des ligues des droits de l'homme informed the High Commissioner of its commitment to providing his Office with all relevant information on the question of human rights and terrorism, and in that connection provided a copy of the annual report of the Observatoire pour la protection des défenseurs des droits de l'homme.

33. The International Service for Human Rights informed the High Commissioner of its active analysis of the issue, in particular with respect to the situation of human rights defenders worldwide. It provided the High Commissioner with statements and reports from three international meetings, held in 2002, that focused on the impact of counter-terrorism measures on human rights defenders.

V. Areas of concern in the protection of human rights while countering terrorism

34. United Nations human rights treaty bodies and special procedures, as well as regional bodies, have highlighted particular areas of concern that have come under pressure in the context of action against terrorism. These "pressure points" require special attention in order to ensure full respect for human rights in counter-terrorism efforts.

A. Right to life

35. The right to life is non-derogable under all circumstances, including states of emergency. It has been found to be especially relevant to efforts to apprehend suspected terrorists, as well as to proceedings that may result in the application of the death penalty. The United Nations Human Rights Committee has expressed concern, inter alia, over the use of weapons in combat situations linked to alleged terrorism, leading to large-scale loss of life.[4] Regarding the death penalty, in its General Comment No. 29, the Human Rights Committee has noted that due to the non-derogable nature of the right to life, any trial possibly leading to capital punishment (even during a state of emergency) must conform to the relevant provisions of the International Covenant on Civil and Political Rights, including its due-process and fair-trial provisions.[5]

B. Right to freedom from torture and cruel, inhuman or degrading treatment or punishment

36. The right to freedom from torture and cruel, inhuman or degrading treatment or punishment is non-derogable under all circumstances. The United Nations Committee against Torture has considered the use of torture or ill-treatment in counter-terrorism contexts and has emphasized that, notwithstanding the difficulties posed by the fight against terrorism, "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture."[6]

37. In his report to the United Nations Commission on Human Rights at its fifty-eighth session, in 2002, the Special Rapporteur on torture examined the non-derogability of the right to freedom from torture and cruel, inhuman or degrading treatment or punishment and stressed that the legal and moral basis for the prohibition "is absolute and imperative and must under no circumstances yield or be subordinated to other interests, policies and practices".[7] Along the same lines, in his report to the General Assembly at its fifty-seventh session, the Special Rapporteur reviewed information he had received on counter-terrorism measures and expressed concern that "the provisions of some new anti-terrorist legislation at the national level may not provide sufficient legal safeguards as recognized by international human rights law in order to prevent human rights violations, in particular those safeguards preventing and prohibiting torture and other forms of ill-treatment".[8]

C. Conditions and treatment in detention

38. The Human Rights Committee has stated its view that, though not so specified in the Covenant on Civil and Political Rights, the right of persons in detention to be treated with humanity and with respect for the inherent dignity of the human person is non-derogable, placing an absolute obligation on States.[9] The Committee found this right to have been violated in case No. 577/1994, in which an accused terrorist (convicted after nine months) was held incommunicado, denied access to counsel for at least nine months after arrest and to his family for nearly two years, and was held in a state of isolation for 23 hours a day in a small cell, with no more than 10 minutes of sunlight a day.

D. Principle of legality

39. International jurisprudence has long emphasized the importance of the principle of legality (nullum crimen sine lege), according to which criminal conduct must be defined in law before an offence can be committed, and with sufficient precision so as to prevent arbitrary enforcement. The Human Rights Committee has expressed particular concern over counter-terrorism measures, including legal definitions of the offence of terrorism itself, which are framed so broadly as to violate the principle of legality. In one instance, the Committee stated that the definition of terrorism in national legislation was so broad as to encompass "a wide range of acts of differing gravity".[10]

E. Pre-trial detention

40. The issue of pre-trial detention has raised a number of concerns in the counter-terrorism context, including judicial supervision of such detention, the right to be free from torture, the right to be informed promptly of the reasons for arrest and the existence of any charges, and the prohibition against prolonged pre-trial detention. The Human Rights Committee has stated as a general principle its view that, in order to protect non-derogable rights, the right to take proceedings before a court to obtain a decision without delay on the lawfulness of detention must not be diminished, even when a State has derogated from certain provisions of the Covenant on the basis of a state of emergency.[11] In the case of so-called preventive detention, the Committee has stated that it must not be arbitrary, must be based on grounds and procedures established by law, information on the reasons for such detention must be given, and court control must be available, as well as compensation in the case of a breach.[12] It has concluded that violations of these principles occurred in several cases linked to counter-terrorism measures, particularly where pre-trial detention was prolonged.[13]

41. As a general principle, the Committee has stated that pre-trial detention "should be an exception and as short as possible".[14] Extended pre-trial detention has been said to be in effect a violation of the right to the presumption of innocence.[15] Concerns have also been raised over incommunicado pre-trial detention. The Human Rights Committee has observed that this may violate the right to freedom from torture and cruel, inhuman or degrading treatment, as well as due process rights provided for in articles 9 and 14 of the Covenant.[16]

F. Right to fair trial

42. The Human Rights Committee has highlighted various aspects of the right to fair trial in connection with terrorism prosecutions as matters of concern. It has stated its view that, though not mentioned as non-derogable in article 4 of the Covenant, certain elements of article 14 on due-process rights are obligatory for States, even under states of emergency. These include the presumption of innocence, as well as fundamental requirements of the right to fair trial inherent in the principles of legality and rule of law. It has emphasized that only a court of law may try and convict a person for a criminal offence.[17]

43. The Committee has expressed particular concern over the use of military and other special courts to prosecute terrorism-related offences. It has criticized trials conducted by the same military force that detained and charged the defendant, particularly where the members of the courts are active duty officers and there is no provision for sentences to be reviewed by a higher tribunal, stating that such shortcomings raise serious doubts about the independence and impartiality of military courts.[18] The Committee has urged that civilians be tried in all cases by ordinary civilian courts, and that laws or measures providing to the contrary be amended.[19] It has stressed the importance of the right of an accused to have any conviction and sentence reviewed by an independent higher tribunal according to law.[20]

G. Access to counsel

44. The Human Rights Committee has expressed concern over counter-terrorism measures permitting denial of access to counsel during the period immediately following arrest. It has stated, for example, in an instance in which access was denied for a period of 48 hours, that such measures require justification in view of the obligations imposed by articles 9 and 14 of the Covenant, particularly where less intrusive means exist for achieving the objectives intended to be served by such denial.

H. Freedom of thought, conscience and religion

45. The Human Rights Committee has emphasized that, under article 4 of the Covenant, the right to freedom of thought, conscience and religion is non-derogable. The Committee has underlined that States are obligated, particularly in the aftermath of the catastrophic events of 11 September 2001, to take necessary steps to prevent offences motivated by religious hatred, and to ensure that all persons are protected from discrimination on account of their religious beliefs.

I. Freedom of expression and assembly

46. Counter-terrorism measures may in certain cases result in limitations on the right to freedom of expression and assembly. Under the International Covenant on Civil and Political Rights, States may derogate from this freedom in time of emergency that threatens the life of the nation, provided they follow specific requirements relating to the declaration of emergency. They may also impose certain

limitations in the absence of an emergency, but, as stated in article 19, paragraph 3 of the Covenant, only as "provided by law and ... necessary for respect of the rights or reputations of others [or] for the protection of national security or of public order (ordre public), or of public health or morals." The Human Rights Committee has stressed that any limitations must be justified by specifying the precise nature of the threat posed by full exercise of this right.[21]

J. Freedom from discrimination

47. Several United Nations human rights mechanisms, including the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, have stressed that counter-terrorism measures must not infringe on the prohibition of discrimination on grounds of race, colour, sex, religion, political opinion, national origin or similar grounds.[22] The Committee on the Elimination of Racial Discrimination, for example, referring to measures that single out members of particular groups, has underlined the obligation of States to "ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin".[23] The Committee on the Elimination of Racial Discrimination and the Human Rights Committee have both expressed concern over cases of widespread harassment of persons of particular backgrounds, as well as the use of racial profiling.[24]

48. In a special report submitted to the Commission on Human Rights at its fifty-ninth session, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance called attention to "the grave situation of Muslims and Arabs in non-Muslim countries, which is a direct, proven and recognized consequence of the events of 11 September".[25] He recommended that the Commission, as a matter of urgency, encourage all States "to take preventive measures to guarantee the full and unfettered exercise of ... religious and cultural rights, ... to protect detainees from arbitrariness and prolonged imprisonment and to guarantee the protection of fundamental rights such as the rights to equality before the law, personal integrity and a fair trial".[26]

K. Treatment of non-nationals, including asylum-seekers

49. The Office of the United Nations High Commissioner for Refugees (UNHCR) has expressed concern over attempts to create unwarranted linkages between refugees and terrorism and to erode the right to seek and enjoy asylum from persecution. UNHCR has noted that a number of States have reviewed their asylum systems from a security perspective, tightening some procedures and introducing substantial modifications, for example, by broadening security grounds for detention or reviewing claims for the purpose of detecting potential security risks. According to UNHCR, although international refugee instruments do not provide for safe haven for terrorists and do not protect them from criminal prosecution, it has been notable since 11 September 2001 that in some instances, provisions of the 1951 Convention relating to the Status of Refugees have been broadened, allowing refugees to be excluded from status or expelled. In some countries, the formal incorporation of exclusion clauses into national legislation for the first time was a welcome development. Nevertheless, given its complexity, UNHCR has urged that

consideration of exclusion take place in regular asylum procedures or in the context of specialized units, rather than at the admissibility stage or in accelerated procedures.

50. Concerning steps taken by international organizations to adopt instruments to combat terrorism, UNHCR has promoted the inclusion of precise definitions and avoidance of unwarranted linkages between asylum-seekers and refugees, on the one hand, and terrorists. If definitions are too broad and vague, there is a risk that the "terrorist" label might be abused for political ends — for example, to penalize legitimate activities of political activists, in a manner amounting to persecution.

51. The Human Rights Committee has expressed particular concern over situations in which foreigners suspected of terrorism have been expelled by States without having an opportunity to make a legal challenge to such decisions.[27] The Committee has also called attention to possible violations of the principle of non-refoulement, which places an absolute prohibition on the removal of a person back to a country where substantial grounds exist to fear that he or she may be subject to serious human rights violations, such as torture.[28]

L. States of emergency

52. Finally, it should be noted that United Nations human rights mechanisms have frequently expressed concern over the use of provisions in international instruments for formal declarations of states of emergency, under which certain rights may be derogated from, provided, however, that strict conditions are met.[29] Article 4, paragraph 1, of the International Covenant on Civil and Political Rights provides that "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, ... States parties ... may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." The article goes on to specify, in paragraph 2, certain fundamental rights from which, even in time of public emergency, no derogation is ever permitted.

53. The Human Rights Committee has expressed concern over various aspects of the use of these provisions. For example, it has cited cases where the life and existence of the nation may not be threatened[30] and where states of emergency have been left in place for many years without adequate justification.[31] It has noted situations in which states of emergency are imprecisely defined in law, possibly leading to unjustified restriction of rights.[32] It has also expressed concern over instances in which a state of emergency, with its attendant protective provisions, has not been formally or properly declared.[33] The Human Rights Committee addressed the overall question of human rights and states of emergency in detail, in its General Comment No. 29 (CCPR/C/21/Rev.1/Add.11), dated 31 August 2001.

VI. Conclusions

54. **The struggle against terrorism remains one of the most urgent challenges facing the international community. As attacks this year in a number of**

countries have confirmed yet again, terrorism devastates the human rights of those it targets, crippling their ability to realize their potential as human beings and threatening the development of societies based on democratic principles, rule of law and respect for human rights, including economic and social rights. International cooperation remains an essential component of an effective counter-terrorism strategy, and the United Nations has an important role to play in this regard.

55. While there is no doubt as to the legitimacy and urgency of the need for States to take resolute action against terrorism, United Nations human rights experts have stressed that human rights have come under significant pressure worldwide as a result of counter-terrorism measures, at both the national and the international level. Concerns have been raised over pressures on a wide range of rights, including the rights to life and to freedom from torture, due-process rights and the right to seek asylum. Yet respect for human rights should be seen as an essential part of an effective counter-terrorism strategy, not an impediment to it. We do no service to our greater goal of achieving international peace and security if we acquiesce in the sacrifice of human rights in our efforts to eradicate terrorism.

56. As the Secretary-General stated recently, at the fifth high-level meeting between the United Nations and regional organizations:

> "Every time we advance the protection of human rights, we deal a blow to the evil designs of terrorists, and we remove a sense of injustice which can cause the oppressed to channel their frustration into illegitimate violence. If we compromise on human rights in seeking to fight terrorism, we hand terrorists a victory they cannot achieve on their own. If we build on these fundamentals, I believe we can develop a new vision of global security: a vision that respects human rights while confronting the threats of our age — including the threat of terrorism."[34]

57. Regional organizations have reiterated their commitment that human rights should not be undermined in counter-terrorism efforts. At the fifth high-level meeting between the United Nations and regional organizations, participants expressed the need to uphold and ensure compliance with fundamental human rights and existing international human rights obligations as an integral part of the fight against terrorism, noting that respect for human rights — rather than a trade-off between human rights and security — constitutes a basic element in ensuring security.[35]

58. United Nations human rights treaty bodies and special procedures are paying close attention to this issue, and their conclusions and recommendations deserve wide consideration. The exchange of views that has taken place between United Nations human rights bodies, in particular the Human Rights Committee, and the Counter-Terrorism Committee of the Security Council has been a welcome development.

59. The Office of the United Nations High Commissioner for Human Rights has compiled a digest of universal and regional jurisprudence on the question of protecting human rights while countering terrorism. The digest offers useful guidance to Governments, legal practitioners, human rights defenders and

others on a solid human rights foundation for effective action against terrorism.

60. **States should consider availing themselves of the technical assistance available to help them in fully integrating human rights protections into measures taken against terrorism. Both the Office of the United Nations High Commissioner for Human Rights and regional organizations have notified the Counter-Terrorism Committee of their willingness to provide this kind of assistance.**

Notes

[1] See press release SG/SM/8624-SC/7680.

[2] Available on the Committee web site, http://www.un.org/Docs/sc/committees/1373/sel_docs.html.

[3] See A/AC.96/965.

[4] See CCPR/C/79/Add.54; see also Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights* (OEA/Ser.L/V/II.116, doc.5, rev.1, corr.22) paras. 87 and 89: "[I]n situations where a state's population is threatened by violence, the state has the right and obligation to protect the population against such threats and in so doing, may use lethal force in certain situations ... The means that can be used by the state while protecting its security or that of its citizens are not unlimited, however. To the contrary, as specified by the [Inter-American Court on Human Rights], 'regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends.'"

[5] See CCPR/C/21/Rev.1/Add.11.

[6] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 44* (A/51/44), para. 211.

[7] E/CN.4/2002/137, para. 15.

[8] A/57/173, para. 5.

[9] See CCPR/C/21/Rev.1/Add.11, para. 13.

[10] CCPR/C/79/Add.23, para. 8.

[11] See CCPR/C/21/Rev.1/Add.11, para. 16.

[12] See HRI/GEN/1/Rev.6, chap. II, General Comment No. 8, para. 4.

[13] See CCPR/C/79/Add.56 and 81 and 93.

[14] HRI/GEN/1/Rev.6, chap. II, General Comment No. 8, para. 3.

[15] See Annual Report of the Inter-American Commission on Human Rights 1997, Case 11.205, Report No. 2/97, *Bronstein case* and Annual Report of the Inter-American Commission on Human Rights 1995, Case 11.245, Report No. 12/96, *Gimenez case*.

[16] See HRI/GEN/1/Rev.6, chap. II, General Comment No. 20, para. 6, and CCPR/C/79/Add.61.

[17] See CCPR/C/21/Rev.1/Add.11 and HRI/GEN/1/Rev.6, chap. II, General Comment No. 13.

[18] See CCPR/C/79/Add.67 and 76.

[19] See CCPR/C/79/Add.78 and 79.

[20] See CCPR/C/79/Add.61 and 80.

[21] In case No. 574/94 (1998) and case No. 34/1978 (1981).

[22] See, e.g., International Covenant on Civil and Political Rights, article 26.

[23] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 18* (A/57/18), chap. XI.C, para. 5.

[24] See CERD/C/60/CO/5, CERD/C/60/CO/9 and CERD/C/62/CO/7.

[25] E/CN.4/2003/23, summary, third para.

[26] Ibid., para. 57.

[27] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. I, para. 83 (18).

[28] See CCPR/C/79/Add.105 (1999).

[29] See CCPR/C/21/Rev.1/Add.11.

[30] See CCPR/C/79/Add.76.

[31] See CCPR/C/79/Add.81 and 93.

[32] See CCPR/C/79/Add.78 and 90.

[33] See CCPR/C/79/Add.54 and 78 and 109.

[34] See press release SG/SM/8798.

[35] See press release SG/2084.

United Nations A/58/267

General Assembly

Distr.: General
11 August 2003

Original: English

Fifty-eighth session
Item 26 of the provisional agenda*
The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development

United Nations Verification Mission in Guatemala

Report of the Secretary-General**

Summary

The present report is the eighth on the verification of the peace agreements reached between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca, submitted pursuant to the mandate given to the United Nations Verification Mission in Guatemala by the General Assembly in its resolution 51/198 B. This mandate has been repeatedly extended, and is due to expire on 31 December 2003. The report covers the period from 1 May 2002 to 15 July 2003; this was a difficult period for Guatemala, and implementation of the peace accords has lagged. While there have been some advances, the sustainability of the process can be ensured only if Guatemalans assume full ownership and responsibility to carry it forward.

* A/58/150.

** The submission of the present report was delayed in order to incorporate the results of consultations within the Organization.

03-46589 (E) 120903

I. Introduction

1. The present report is the eighth on compliance with the peace accords signed by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), submitted pursuant to the mandate entrusted to the United Nations Verification Mission in Guatemala (MINUGUA) by the General Assembly in its resolution 51/198 B of 27 March 1997. It covers developments from 1 May 2002 to 15 July 2003.

2. MINUGUA, which will be completing its ninth year in 2003, is entering its final phase of operations. The Mission's mandate was last extended until 31 December 2003, by resolution 57/161 of 16 December 2002. In that resolution the General Assembly took note of the request of the Government of Guatemala for a final extension through the end of 2004, considering that elections will be held in 2003 and a new Administration is scheduled to take office in January 2004. The resolution noted concerns in Guatemalan civil society and in the international community that voids would be created should MINUGUA depart Guatemala before a new Government had taken office and demonstrated its commitment to the peace process.

3. On 18 April 2002, I informed the General Assembly that I had designated Tom Koenigs of Germany as my Special Representative in Guatemala and Head of MINUGUA, effective 1 August 2002. Mr. Koenigs replaced Gerd Merrem.

4. During the period covered by the present report, MINUGUA continued to verify compliance with the peace agreements while intensifying a transition programme designed to strengthen the capacity of national actors to carry the peace agenda forward following the conclusion of the Mission. Among MINUGUA's transition partners in Guatemala, special priority has been placed on the Office of the Human Rights Ombudsman. Under a memorandum of understanding signed in 2002, the Mission has been providing training in the area of human rights verification, thus sharing the experience gained in this field since the installation of MINUGUA.

5. The Mission's transition strategy also attaches great importance to ensuring follow-on to the peace process by the international community, particularly through the specialized agencies, funds and programmes of the United Nations system. MINUGUA has intensified its coordination with the Office of the United Nations High Commissioner for Human Rights, in the expectation that it will expand its presence in Guatemala as MINUGUA departs. Also of importance is the United Nations Development Programme (UNDP) technical assistance for peace priorities and reporting by the United Nations country team on compliance with socio-economic commitments envisaged in the peace accords. The Mission has also been supporting efforts to strengthen the role of government/civil society commissions established under the peace agreements to ensure follow-through and participation in the implementation process.

6. Progress in implementation fell short of expectations and was insufficient to inject momentum into a peace process that had stagnated in previous years. Advances were verified in certain areas, such as the passage of legislation against discrimination, the redeployment of military units and the development of a national reparations programme for the victims of human rights violations committed during the armed conflict. But there was also inaction on many important issues. Moreover,

progress was overshadowed by such negative trends as the worsening public security situation, persistent corruption, setbacks in the fight against impunity and an ongoing climate of intimidation against justice officials and human rights defenders.

7. Consolidating the vision of the peace accords will require greater political will, the involvement of all sectors of society and the continued engagement of the international community. The critical evaluation of progress during this past period should not be a cause for pessimism. Nor should we lose sight of the broader gains of the Guatemalan peace process. With elections approaching in November 2003 and a new Administration to take office next year, the challenge ahead will be to consolidate gains to date and to deepen crucial processes of reform.

Political context

8. The political polarization noted in previous reports persisted, further impeding the advance of the peace process. Cooperation between the Government of President Alfonso Portillo, political opposition parties, the private sector and groups in civil society became increasingly difficult as the 2003 elections approached and allegations of official corruption continued to surface. Congress was unable to obtain the two-thirds majority required to approve an electoral and political parties law that would have greatly expanded opportunities for participation, particularly by members of the Maya, Xinca and Garifuna indigenous groups. The private sector systematically opposed Government efforts to raise revenues, with its Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations successfully filing numerous constitutional challenges to tax increases.

9. Tensions rose around the country in June 2002 as former civil patrollers blockaded the Tikal archaeological park and an airport and oil installations nearby to demand compensation for their services during the armed conflict. The Government's decision to pay these groups prompted sharp criticism, in the light of their involvement in past human rights violations and the absence at that time of a reparations programme for victims of abuses committed during the conflict. Demonstrations multiplied around the country, including one protest in which a former patroller was shot and killed, apparently by police. In May 2003, ex-patrollers angry over delays in the delivery of the promised benefit payments burned down municipal buildings and a market in the town of Chicacao, department of Suchitepéquez.

10. Public security deteriorated further, prompting the Government to resort again to military patrols in the fight against common crime. The sense of insecurity increased following a spate of killings in late 2002 and early 2003. The victims included Antonio Pop Caal, a prominent Mayan intellectual; Diego Velasco Brito, a Mayan former congressman; and José Fernando Lobo Dubon, a former president of Congress. A judge working on high-profile narcotics cases survived an assassination attempt in Guatemala City in January 2003, in which her vehicle was sprayed with gunfire. This occurred only days after the fatal shooting of an administrative court judge. Three violent prison uprisings claimed dozens of lives.

11. Threats and attacks against human rights defenders, justice officials, trade unionists and journalists continued.[1] Some setbacks in high-profile human rights cases showed the persistent fragility of the justice system. The climate of intimidation against activists also prompted visits to Guatemala by Hina Jilani, the Special Representative of the Secretary-General on human rights defenders, and by members of the Inter-American Human Rights Commission. Concern about these problems prompted an agreement in March 2003, between the Government and the Human Rights Ombudsman, with the support of non-governmental human rights organizations, to establish an internationally backed investigation into the existence of clandestine groups with the participation of the United Nations and the Organization of American States. I sent a technical exploratory mission of independent experts and United Nations officials to Guatemala to assess the viability of such a commission.

12. The visit in September 2002 of Rodolfo Stavenhagen, United Nations Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, drew attention to the deep-rooted problem of racial discrimination and to the need for progress in implementing the Agreement on the Identity and Rights of Indigenous Peoples.

13. New accusations surfaced regarding corruption and the influence of drug trafficking and organized crime in governmental spheres. In January 2003, the United States Government decertified Guatemala as a cooperative ally in the fight against illegal drugs. The Government dissolved its anti-narcotics police after members were implicated in corruption and serious human rights violations. The Attorney General announced he was opening investigations of five former military officers suspected of involvement in illicit activities. As the period drew to a close, arrests took place and investigations continued into allegations that corrupt officials had embezzled large sums of money from the nation's social security fund.

14. The sixth anniversary of the signing of the Agreement on a Firm and Lasting Peace was celebrated on 29 December 2002, in a ceremony held in the presidential palace in the presence of clergy, civil society representatives and members of the international community. The President announced that he had completed the demobilization of one fourth of the members of the Presidential General Staff, the presidential guard whose disbandment is long overdue under the peace agreements. The President subsequently sent legislation to Congress, which, if passed, would require final demobilization by November 2003.

15. A national teachers' strike paralysed public schools for two months. Strikers took over ports, customs houses and airports before the strike was peacefully resolved in March 2003 after talks facilitated by the Archbishop of Guatemala City. Peasant organizations undertook massive protests to demand land and a Government response to the crisis affecting the coffee market, with its resulting negative impact on the livelihood of many rural poor.

16. The campaign for the November national elections began officially in May 2003. The first round of voting was set for 9 November and, if necessary, a second presidential round for 28 December. At stake are the presidency, all of the 158 seats in Congress and all 331 of the nation's municipalities. The Supreme Electoral

[1] In June 2003, armed men broke into the home of José Rubén Zamora, president of *El Periódico* newspaper, and bound and threatened him along with members of his family.

Tribunal launched a voter registration drive to counter historically low participation, particularly among indigenous people. The Organization of American States and the European Union announced that they would be sending election observers. The electoral campaign has been marked by tensions surrounding the presidential aspirations of Efraín Ríos Montt, President of the Congress and former de facto ruler, who had been barred from running on constitutional grounds on two previous occasions. The Supreme Electoral Tribunal and the Supreme Court upheld those earlier decisions, but were overruled on 14 July by the Constitutional Court, which approved Ríos Montt's candidacy, prompting an outcry by human rights leaders and constitutional activists. Serious concerns arise, as following a decision of the Supreme Court to uphold an appeal of the Constitutional Court's ruling, riots and violence broke out in the capital. In what seemed to be a highly organized protest, hundred of Ríos Montt's supporters transported in trucks converged on the Electoral Council.

17. The Government, donors and representatives of civil society and political parties participated in a Consultative Group meeting in Guatemala City on 13 and 14 May 2003 that was to evaluate progress in implementing the peace agreements since the meeting in Washington, D.C., in 2002. The reports issued by MINUGUA and others in the international community noted some advances, but regretted that the implementation process had fallen short of Government promises. Continued attacks on human rights monitors, the failure to pass a land registry law and slow progress in improving the situation of indigenous peoples were among the major concerns of the donor community. All participants agreed that the peace agreements should remain Guatemala's essential road map for development. The President announced that he would introduce legislation to strengthen the Commission to Follow up the Implementation of the Peace Agreements and the Peace Secretariat of the presidency so as to ensure the continuation of the peace accords under the next administration. The largest donors expressed continued strong support provided Guatemalans remained committed to moving ahead in the peace process.

18. Following the Consultative Group meeting, the Government presented measures intended to advance the peace agenda during the remaining months of the Administration. They include full demobilization of the Presidential General Staff, passage of a 2004 budget reflecting peace priorities, reductions in the army, the initiation of the national reparations programme and the investigation into clandestine groups, as well as the passage of pending legislation, including the land registry law and laws on access to information, on classification and declassification, and on elections and political parties.

19. The Under-Secretary-General for Political Affairs, Kieran Prendergast, visited Guatemala from 4 to 8 July 2003 to review MINUGUA's transition plans and meet with President Portillo and high Government officials, electoral authorities and leaders of civil society. The Under-Secretary-General underlined the need to intensify national efforts to implement the peace agreements and to hold credible and transparent elections. He also emphasized rule of law and broader political participation as keys to Guatemala's future.

20. On 11 July 2003, under the auspices of the Organization of American States, representatives of the main political parties signed a declaration expressing support for the peace agreements as "state accords" that should be incorporated into their government plans and for the conduct of peaceful and lawful elections.

II. Implementation of the peace accords, 2002-2003

21. MINUGUA verification activities focused on human rights, the rights and identity of indigenous peoples, demilitarization and the strengthening of civilian power, and socio-economic aspects and the agrarian situation. In evaluating progress, the Mission took account of the implementation and verification timetable established by the Commission to Follow up the Implementation of the Peace Agreements, which extends through 2004. It also considered the commitments made by the Government at the Consultative Group meeting of February 2002 to guarantee sufficient budgetary appropriations for implementation and increase tax revenues to finance peace expenses; to fight impunity, improve citizen security and guarantee human rights; to increase transparency; and to promote dialogue and national unity.

A. Human rights and justice; the fight against impunity

22. With the end of the armed conflict, Guatemala's human rights situation improved dramatically, as reflected in reduced levels of such violations as executions, forced disappearances and torture. Political killings were greatly reduced and freedom of the media increased. Progress was much slower in combating impunity and consolidating the rule of law, both fundamental commitments of the Comprehensive Agreement on Human Rights.

23. Public security deteriorated, impunity persisted, and the climate of intimidation against human rights defenders, social activists and journalists noted in my previous report continued. Budgets for key rule-of-law institutions remained insufficient, and judicial reform efforts proceeded slowly. An important step forward was the agreement between the Government and civil society organizations on the design of a national reparations programme for the victims of human rights violations committed during the armed conflict.

24. Human rights activists, judges, prosecutors, attorneys, witnesses and forensic anthropologists have also been subject to threats, harassment and violence. From late 2002 to mid-2003, there were several serious incidents, including attacks against three judges and two public prosecutors (one of whom was the special prosecutor for violations against human rights defenders), and the murder of a key witness in the case of the killing of Bishop Juan Gerardi, for which military officers were convicted. Break-ins occurred at offices of the Human Rights Ombudsman in Izábal and at the Guatemala City home of a leading opposition politician and a well-known human rights activist. In June 2003, unknown assailants shot and killed the regional delegate of the Human Rights Ombudsman for Chimaltenango. Also of grave concern was a series of murders of youths participating in prevention and rehabilitation programmes for juvenile delinquents; in Guatemala City alone, the non-governmental Centre for Human Rights Legal Action registered 37 such deaths between November 2002 and January 2003.

25. The common element in each of the cases described above has been the lack of results in official investigations. The response of justice sector authorities has been limited and inadequate. A presidential commission and a special prosecutor's office established in mid-2002 to investigate threats against human rights activists did not

receive the financial support or the necessary collaboration from other institutions to achieve results.

26. The cases described above drew heightened attention to the problem of clandestine groups believed responsible for many of these incidents. Last March, the Government and the Human Rights Ombudsman, with the support of non-governmental human rights organizations, agreed to create a Commission for the Investigation of Illegal Groups and Clandestine Security Apparatuses, and approached the United Nations to support this initiative. Such an investigation, in tandem with greater efforts to strengthen the permanent institutions of the criminal justice system, could make an important contribution to identifying and combating such groups.

27. The decision of an appeals court to overturn the conviction of a former army colonel in the 1990 killing of anthropologist Myrna Mack was a disappointing setback in the fight against impunity. The conviction had been considered a milestone in breaking a long pattern of military impunity in Guatemala. That progress is possible in punishing State agents for human rights violations was demonstrated in the conviction of 16 agents from the now-dissolved Department of Anti-Narcotics Operations of the National Civilian Police. The men were convicted for their role in the extrajudicial killings committed last year in Chocón, a community in Izábal department.

28. Lynchings continued without eliciting a forceful State response. Several isolated efforts at prevention were made by the judicial branch and the National Commission for the Strengthening of the Justice System (which established a national round table against lynching).

29. Although some justice sector institutions, including the National Civilian Police, received nominal budgetary increases for 2003, the amounts remained insufficient to undertake much-needed expansion and reform plans. One particularly disturbing example is the Public Defender's Office, which was forced to dramatically curtail its services due to a lack of funds.

30. The proper functioning of the Office of the Human Rights Ombudsman is essential for protecting human rights in Guatemala, and should be a top priority. In that regard, Congress took a positive step by selecting a new Ombudsman endorsed by civil society organizations. Although the Office still faces considerable challenges, reorganization and strengthening under the leadership of Ombudsman Sergio Morales are encouraging signs. The reform process has been hindered, unfortunately, by meagre budget allocations, a situation that has forced it to rely on international cooperation to finance its restructuring.

31. Prison reform efforts made little progress, notwithstanding three major riots that underscored the lawlessness, overcrowding and corruption that plague the system. Congress has failed to act on penitentiary reform legislation, and authorities have so far eschewed a thorough examination of the budgetary and administrative roots of these problems. The recommendations of a Consultative Commission on the penitentiary system have yet to be implemented.

32. The safety of judges is vital for judicial independence; measures to protect them, however, have had limited impact. Supreme Court authorities took some steps forward by creating a special security unit to protect judges and by proposing a special life insurance programme.

33. Expanding access to the justice system, primarily in rural areas, is of paramount importance. Although three new justice administration centres were opened in remote and predominantly indigenous areas, their effectiveness was limited by deficiencies in inter-institutional coordination and unclear policies for hiring bilingual staff.

34. Several institutions involved in the training of justice sector professionals have suffered significant budget cuts, including the Judicial Branch Training Unit, the National Civilian Police Academy and the Penitentiary Studies School. The Education and Training Unit of the Penal Public Defence Office was virtually eliminated.

35. In July 2003, the Government inaugurated a National Reparations Commission to create and administer a national reparations programme for victims of the 36-year-long armed conflict, a significant advance in compliance with the peace agreements and the recommendations of the Historical Clarification Commission. This was achieved through negotiations between the Government and members of a coalition of victims' organizations, with the good offices of MINUGUA. The Commission should ensure the swift creation of the reparations programme, and the Government should allocate sufficient funds to finance payments. It is important that Congress reverse its earlier refusal to support national reparations and ensure the funding base and institutional stability of payments by enacting the programme into law.

36. The Government continued to ratify international human rights instruments such as the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. In the Inter-American Court of Human Rights, the Government demonstrated willingness to accept State responsibility for human rights violations and to negotiate settlements with victims or their families, including in the case of Myrna Mack. An exception to this positive trend in the international arena was the continued inaction in Congress on the Rome Statute of the International Criminal Court, even though the treaty had the support of the presidency and human rights organizations, and was the subject of a favourable ruling by the Constitutional Court.

B. Identity and rights of indigenous peoples

37. Advances in the implementation of the Agreement on the Identity and Rights of Indigenous Peoples have been limited over the years, despite its centrality in a country in which approximately half the population is indigenous. Guatemala's indigenous people continue to suffer widespread ethnic, racial and cultural discrimination, while lacking access to basic social services and experiencing disproportionate levels of poverty, including extreme poverty. The ethnic diversity of the nation thus remains largely underrecognized as one of its defining characteristics and greatest assets.

38. While many aspects of that Agreement remain pending, several positive steps were taken. The Government eased access to national cultural monuments for the practice of Mayan spirituality. In May 2003, just prior to the Consultative Group meeting, Congress passed a new law that facilitates the use of indigenous languages in official spheres. Legislation was also adopted that penalizes discrimination in its many manifestations, including on the basis of gender.

39. Much of the legislation stipulated in the Agreement on the Identity and Rights of Indigenous Peoples remained pending, including laws to recognize indigenous forms of land ownership, to facilitate indigenous access to radio frequencies and to consolidate bilingual education. Guatemala has still not recognized the competence of the United Nations Committee on the Elimination of Racial Discrimination to receive individual complaints. Particularly disappointing for indigenous organizations was the lack of interest by Congress in adopting legislation to codify the crime of sexual harassment and to impose higher penalties when the victim is indigenous. The Office for the Defence of Indigenous Women's Rights, created under the peace agreements, still lacks a sufficient budget to effectively expand its coverage into the interior of the country.

40. There were few advances in promoting access to the justice system by indigenous peoples in their own languages, whether through a system of interpreters or the recruitment of judges, prosecutors and other officials who speak indigenous languages. However, decisions taken in three separate court cases during the period evidenced growing awareness of obligations to respect the collective rights of indigenous peoples.

41. Educational reforms to reflect the linguistic and cultural diversity of the country continued to progress slowly. Such measures as pilot programmes for bilingual education, the development of cross-cultural curricula and an increase in bilingual teacher training institutes are positive but should be implemented on a much broader scale.

42. In March 2003, President Portillo inaugurated a presidential commission for the elimination of discrimination and racism against indigenous peoples. Its effectiveness will ultimately depend on its ability to generate recommendations and on the Government's willingness to implement them.

C. Demilitarization and the strengthening of civilian power

43. Advances in consolidating civilian institutions and reshaping the military within a democratic institutional framework have continued to be slow, despite progress towards dissolving the Presidential General Staff and redeploying the military according to national defence criteria rather than internal security considerations.

44. Results were mixed on the legislative agenda. Despite substantial discussions on the matter between the Government and civil society organizations, laws on access to information and the classification of State information, controls over firearms and munitions and the regulation of private security firms had yet to be enacted. Congress, however, passed a law that established a civilian alternative to mandatory military service, as provided for in the peace agreements.

Public security

45. The National Civilian Police corps was significantly weakened during the period. The Government responded to the growing crime problem by involving the army in public security tasks, rather than strengthening the National Civilian Police. This tendency stunts the development of the latter and delays the withdrawal of the armed forces from civilian tasks. The Mission has verified many cases in which

soldiers patrol without any police presence, and where planning for operations is carried out by the military zone commanders.

46. Prospects for more coherent future policies on security and defence improved as the Government and civil society organizations cooperated on the establishment of the Advisory Council on Security envisaged in the peace agreements. The Council was created by presidential decree in February 2003, and has engaged civil society representatives in discussions to determine its statute and work plan. Composed of prominent citizens, the Council should contribute to the formulation of public security and defence policy.

47. The Interior Ministry and civil society representatives, with technical assistance from MINUGUA, drafted new regulations on police discipline that are still awaiting approval by the executive branch. These regulations would help to remove abusive or corrupt officials. The creation of offices within the National Civilian Police dealing with human rights, gender, community policing and multicultural issues should enhance police practices on these issues.

Armed forces

48. Military spending in 2002 was below that of the previous two years, but once again went beyond the goal of 0.66 per cent of gross domestic product, as established in the peace accords. This was the sixth consecutive year in which spending exceeded the targets of the accords. The final budget of the National Defence Ministry in 2002 was 1.238 billion quetzales, 24 per cent above the sum approved by the Congress. Transparency on the use of funds was also lacking, as military authorities argued that the need for military secrecy prevented them from answering questions from Congress about the budget.

49. Following several years of stagnation on this commitment, the army made substantial progress in redeploying its units in conformity with external defence functions. The National Defence Ministry deactivated three military zones and 16 detachments, while maintaining its controversial detachment in the town of Rabinal, Baja Verapaz. This installation serves no tactical purpose and continues to cause friction with the many victims of human rights violations living in the community.

50. Representatives of the National Defence Ministry and civil society held discussions on the drafting of a national defense white book within the framework of thematic dialogue round tables organized by UNDP and the Organization of American States. Consensus reached in these discussions should constitute the basis for a new defence policy and a new military doctrine.

51. The steps taken towards the dissolution of the Presidential General Staff suggested that this process had become irreversible, although some concern remained about its completion before the end of the current Administration. The Government reported having demobilized 186 members of the corps in late 2002 and 107 more in May 2003, leaving 449 staff. At the conclusion of the period, Congress was considering legislation abolishing the Presidential General Staff on 30 November 2003, while legalizing its successor, the Administrative and Security Affairs Secretariat (SAAS), the civilian institution that has been gradually taking over the functions of the Presidential General Staff under the peace accords. Since its founding, SAAS has, in a professional fashion, provided security for the Vice-President and his family and for former Presidents.

Information and intelligence

52. Tangible progress in establishing a civilian State intelligence system was still lacking. Forward movement in this key area is one of the objectives of the High-level Commission formed in late 2002 by the Interior Ministry and representatives of civil society. The Commission drafted legislation to create a Department of Civilian Intelligence and Information Analysis and drafted a firearms law that would transfer the Arms and Munitions Control Department from the National Defence Ministry to the Interior Ministry.

53. The Strategic Analysis Secretariat of the Presidency, a civilian institution created under the accords, was weakened by cutbacks in its budget and leadership turnover.

D. Socio-economic and agrarian aspects, and gender issues

54. Under the Agreement on Social and Economic Aspects and the Agrarian Situation, the Government should promote rural development and overcome the vast social inequalities in Guatemala, where more than half of the population lives in poverty, and at least 15 per cent in extreme poverty. Progress in this area was hindered by inadequate resources for relevant institutions and lack of progress on key legislation.

55. The continued depression of coffee prices exacerbated the already precarious situation of the Guatemalan peasantry, further complicating the prospects for reducing rural poverty. In early 2003, the Government agreed to a proposal from civil society organizations to fund a "coffee emergency" plan, including crop diversification and the acquisition of new lands for unemployed peasants.

Land and rural development

56. The absence of a national land registry system continues to be a serious obstacle to rural development and the resolution of land conflicts. Actions taken in this area have been erratic, and donors, who have contributed significant bilateral and multilateral funds for cadastre projects, expressed increasing frustration. President Portillo withdrew land registry bills from the Congress on two separate occasions before finally presenting a third, expanded proposal in April 2003. It is hoped that Congress will act on the legislation, which is crucial for establishing legal security for landholdings. The creation of the Secretariat of Agrarian Affairs was a positive step towards the formulation of coherent and coordinated agrarian policies.

57. Other important legislative items, such as the law on agrarian and environmental jurisdiction, remained pending. Nor had there been progress on laws regarding idle lands and territorial taxes, which are considered important for stimulating the rural land market.

58. The Presidential Office for Legal Assistance and Dispute Settlement in Land Matters, which played an important role in helping to resolve peacefully some of the country's nearly 2,000 registered land disputes, was not assigned funds in the 2003 budget. Stopgap funding provided by the Government in April 2003 forestalled the closure of the institution, but was insufficient to prevent severe staff cuts and the closing of several regional offices.

59. The budget allocated to the Land Trust Fund was again below the amount prescribed in the executive decree that created the fund in 1998 as a key mechanism of the peace agreements. The fund has relied largely on multilateral loans and foreign aid, and has made only modest progress in securing land for needy populations. Still pending are the creation of a guarantee fund to help mobilize private resources for land credit and the recovery of vast tracts of lands, particularly in the Petén and Northern Transversal regions, which had been irregularly adjudicated by previous Administrations.

60. In April 2003 discussions aimed at defining a rural development policy got under way between the Government, peasant and indigenous groups and members of the private sector, in the context of the thematic round tables organized by UNDP and the Organization of American States.

Fiscal policy and transparency

61. The peace agreements require adequate budgets for ministries, secretariats and other government institutions tasked with carrying out the provisions of the accords. The 2003 budget law contains improvements over that of the previous year, but allocations remain insufficient, thus imperilling the survival of key institutions, such as the Presidential Office for Legal Assistance and Dispute Settlement in Land Matters and the Public Defender's Office. During the past year, moreover, the Government has continued to distort the priorities of the approved budget through transfers, primarily to the military. The resulting 24 per cent increase in the actual 2003 budget of the National Defence Ministry was outpaced only by the 95 per cent increase for the Presidential General Staff.

62. A major factor behind the budgetary shortages is Guatemala's continuing failure to increase tax revenues to the target of 12 per cent of gross domestic product as established in the peace accords. Although there was notable improvement in tax collection and administration, the tax base increased to only 10.5 per cent of gross domestic product in 2002, and current projections indicate that the amount will not surpass 10.7 per cent for 2003. Responsibility for the low revenues was not the Government's alone, the organized private sector maintained its stiff resistance to tax increases.

63. Despite the designation of a special anti-corruption prosecutor, there were few tangible results in resolving any of the major cases of corruption unveiled in recent years. Some positive steps were taken with the support of the World Bank, including the creation of a Commission on Transparency and Corruption and the approval by Congress of the Integrated Financial Administration Control System, which should now be expanded to cover Congress, municipal governments and social funds.

Decentralization

64. A package of laws on Development Councils, the Municipal Code and decentralization have opened up new possibilities for broader social participation in development planning at the local level, particularly by groups who were traditionally excluded, such as women and indigenous people. One disappointment, however, was the lack of consideration given by the national Government to the slates of gubernatorial nominees proposed by the revamped Councils in several regions. The lack of a clear national policy on decentralization and divergent

interpretations of the new laws by different government institutions has also inhibited progress.

Education

65. The budget for the Ministry of Education increased by 12 per cent over that of the previous year, but fell short of requirements to significantly expand coverage, implement educational reform and improve physical infrastructure. Guatemala's allowance for education, at 2.5 per cent of gross domestic product in 2002, remained one of the lowest in Latin America.

66. Curriculum reform was extended through the elementary school level, and more training institutes were opened for bilingual teachers. However, several programmes were weakened, including those for scholarships for children and school breakfasts and lunches, mainly due to a lack of organization and funds. The teachers' strike in early 2003 exposed the multiple shortcomings of the educational system, without resulting in proposals for long-term solutions. One outcome was to merge the well-regarded Programme for Educational Self-Management into the new System for the Decentralization of Educational Management, created in March 2003. Important actors such as the Consultative Commission for Educational Reform were not consulted in this decision.

Health and housing

67. The Ministry of Health suffered budget cutbacks in 2003. Health services continued to be precarious, especially in the rural and largely indigenous areas. Little emphasis was placed on basic preventive measures, and the lack of potable water remained a chronic problem in many rural communities.

Gender

68. Reforms to Development Councils have opened up new ways for women's organizations to participate at the national, regional and departmental level. The Presidential Secretariat for Women was established to ensure that public policies are consistent with gender-focused guidelines, but its budget was insufficient to fully carry out its mandate. A coalition of women's groups and other civil society organizations prepared a draft law that instils a gender perspective into the Labour Code, but this was not acted upon in the Congress.

Resettlement of uprooted populations and incorporation of ex-combatants

69. There were no major advances in developing sustainable policies on resettlement of the uprooted, or displaced, population and the definitive integration of the Unidad Revolucionaria Nacional Guatemalteca (URNG). The construction of 5,700 homes for persons uprooted by the conflict was, however, a positive step. Various other commitments to the same groups — on land, productive development, health and education — did not advance.

70. The lack of a rural development policy and the limited access of those living in remote areas to basic services continued to curtail the full and productive reintegration of demobilized URNG members into society. In May 2003, a major European Union-funded project in support of the reincorporation of ex-combatants came to a close. National resources should be assigned to the Trust Fund for

Productive Projects; directed at both the demobilized and the resettled populations, this fund has been awaiting implementation for the past two years.

III. Observations

71. Guatemala took a courageous and difficult step in signing peace agreements that sought to bring to closure the fighting while undertaking a profound and ambitious transformation of the country. The complex and sweeping nature of the accords makes progress difficult even when sufficient political will and financial resources are available. But the scale of the problems or the time necessary for their resolution should not become a justification for failing to advance more decisively on this path. Great challenges require great efforts, and although the present report documents some important progress and many reasons to remain optimistic, it is also a reminder that more substantial efforts are needed.

72. International support and encouragement will continue to be important, but the process will be sustainable in the long run only to the extent that Guatemalans assume full ownership and responsibility to carry it forward. I am greatly encouraged that Guatemala's main political parties have committed themselves to carrying on with the peace process. I am also encouraged by the involvement of civil society organizations and their enthusiasm in framing future work agendas around implementation of the agreements.

73. During the months that remain under the current Administration, every effort should be made to implement pending commitments in the peace accords. The Presidential General Staff should be completely dissolved. Actions against discrimination should be accelerated. The 2004 budget should reduce military spending and dedicate significantly increased resources to social needs and rule of law institutions such as the National Civilian Police, the Public Ministry, the judiciary and the Office of the Human Rights Ombudsman. The list of priority peace legislation prepared by the Commission to Follow up the Implementation of the Peace Agreements should be adopted in its entirety, including the land registry law, the laws on access to information and the classification and declassification of State information and a framework law on civilian intelligence. It should also be a priority to pass legislation to strengthen the key institutions created by the accords and charged with their implementation and to begin implementation of the national reparations programme for victims of human rights violations. Each of these measures was identified in this year's Consultative Group meeting as a priority near-term agenda item for Guatemala.

74. The success of the peace process in the medium and longer term will require strong State institutions capable of articulating long-term and adequately funded public policies for making progress on the broad thematic agenda of the accords: human rights, the fight against discrimination, public security and national defence policy, rural development, health and education.

75. A long-term commitment is needed to strengthen State institutions of the justice system, including the police, the courts, the Public Prosecutor's Office and prisons, in addition to the Office of the Human Rights Ombudsman. Human rights policies should be formulated in consultation with civil society organizations, which implies the added challenge of breaking the cycles of mistrust that have made

dialogue difficult. These and other concerted steps must be taken to break the wall of impunity that is blocking Guatemala from achieving the full promise of peace.

76. In matters relating to indigenous peoples, strategies for reinvigorating the implementation of the peace accords should include the promotion of public policies developed in consultation with the indigenous peoples to gradually reduce the existing level of discrimination. The many legislative proposals that have been prepared by indigenous peoples should be taken into consideration. The judicial branch should do more to promote access for indigenous peoples to justice in their own languages and greater respect for indigenous law. Changes in the Constitution should also be considered, to bring Guatemala's legal framework into line with the peace accords and international treaties ratified by the country. Renewed progress in implementing the Agreement on the Identity and Rights of Indigenous Peoples would have a positive impact on the entire country, strengthening its democracy and promoting the development of a multi-ethnic, multicultural, multilingual State.

77. Bold steps need to be taken in the area of demilitarization and the strengthening of civilian power. The transformation of the armed forces requires their full subordination to civilian authority and a structure, force level, doctrine and deployment consistent with a democratic society in peacetime. Pending legislation should be approved, a new defence policy and military doctrine enacted, and progress made in establishing a civilian intelligence system under democratic control. Decisive efforts are needed to strengthen the National Civilian Police and its Academy, and to ensure that the civilian police have the training, manpower, resources and national coverage necessary to provide adequate security to all Guatemalans.

78. The peace process cannot prosper if it is starved of funds or if the priorities of the peace agreements are not reflected in the national budget. Efforts to increase the tax base, within a framework of transparency, should be supported by the private sector and society in general. Allocations of State resources should give priority to the peace agreements, taking into account growing demands for social services and present economic growth rates.

79. Progress in rural development is central for overcoming the structural causes of the armed conflict. All sectors should participate in discussions aimed at developing long-term State policies that are responsive to the nation's diversity. The Government should also commit human and material resources to the fulfilment of legal commitments in respect of land and rural development, mainly through the formulation of a law on agrarian and environmental jurisdiction and the reforms to establish compensation mechanisms in matters of land disputes.

80. Guatemala's electoral process has been marred by a number of unfortunate incidents, some of which have led to violence. Some followed acts of provocation, suggesting that some participants have not fully committed themselves to the fundamentals of democratic elections — tolerance, pluralism and non-violence. It is only in a climate of peace, devoid of threats and intimidation, that Guatemalan voters can exercise their right to freely choose their leaders and hold them accountable for their performance.

81. In conclusion, allow me to express my appreciation to the parties, in particular to the Government of Guatemala for its continued cooperation with the Mission. Should the General Assembly approve the Government's request for an extension of

the MINUGUA mandate in 2004, this would give the Mission additional time to carry out its transition strategy, while also providing an opportunity to accompany a new Administration in the implementation of the peace accords during its crucial first year in office.

82. The international community should continue to focus its cooperation in the framework of the peace accords, while national efforts are being strengthened at the same time to sustain the process. Even as MINUGUA phases out its operations in Guatemala, the United Nations will remain engaged, steadfast in the conviction that the peace accords are the best and only workable path for lasting peace and development in the country.